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THE

WORKS

OF

JEREMY BENTHAM,

PUBLISHED UNDER THE SUPERINTENDENCE OF
HIS EXECUTOR,

JOHN BOWRING.

VOLUME IX.

EDINBURGH:
WILLIAM TAIT, 107, PRINCE'S STREET;
SIMPKIN, MARSHALL, & CO., LONDON.
MDCCCXLIII.
1843

EDINBURGH
Printed by WILLIAM TAIT, Prince's Street.

EDINBURGH
Printed by WILLIAM TAIT, Prince's Street.

NOTE BY THE EDITOR.

Of the various branches of law, the Constitutional, was the last upon which Mr Bentham brought his searching mind to bear.

In 1776, in his *Fragment on Government*, he proclaimed that the only proper basis of law in general, was the fundamental axiom, that it is the greatest happiness of the greatest number which is the measure of right and wrong. But in that work he confined himself to an analysis and exposition of the illogical definitions, contradictions, fallacies, and fictions of Blackstone on the subject of government. So unconscious was Mr Bentham of the defects in the English system of government, that six years afterwards, adopting the opinions of those by whom he had been surrounded in his youth, he supposed the constitutional law of this country would probably be found, upon examination, to be little short of perfection.*

In his work on *Morals and Legislation*, and in his celebrated *Traités de Legislation* edited by Dumont, the civil and penal branches of law only, are treated of. When the former work was published in 1789, (it having been first printed in 1780,) Mr Bentham added a long note, in which he mentions the constitutional as a third branch, necessary to form a complete body of law: giving at the same time, a general definition of it, together with a short account of its connexion with the other branches of law.

From various notes and memoranda, it would appear that his attention was first directed to the science of government about the year 1814, though then but casually. The progress he had made in this study became manifest, three years afterwards, by the publication of his eloquent *Introduction* to his *Parliamentary Reform Catechism*. At the close of 1819 he published his *Radical Reform Bill*, and about the same time, he wrote the little tract intituled *Radicalism not Dangerous*, now published for the first time in this Collection. All these will be found in vol. iii. towards the end.

The political changes in Spain and Portugal strongly excited Mr Bentham's generous sympathies, and the result was his Letters on the *Liberty of the Press and Public Discussion*, vol. ii. p. 276 *et seq.*, and his *Three Tracts on Spanish and Portuguese affairs*, vol. viii. p. 465 *et seq.*, which were written in the year 1820. The object of one of these Tracts, was to point out to the Spanish nation, the uselessness and mischievousness of a House of Lords.† In 1821 he wrote his *Letters to Count Toreno*. The ostensible object of these letters, was an examination of the then proposed Spanish *Penal* Code; but they contain much that relates to Constitutional Law in general, and the Spanish Constitution in particular.

Mr Bentham had now directed all the energies of his logical mind to the subject of Constitutional Law, and had become the declared advocate of a republican form of government.

On the 3d December 1821, the General and Extraordinary Cortes of Portugal, accepted Mr Bentham's offer, to prepare an all-comprehensive Code of Laws for that nation; which induced him in the following year to print his *Codification Proposal*, addressed to all nations professing liberal opinions. Thus encouraged by the Portuguese Cortes, he pursued his task with renewed vigour, and in 1823 published the *Leading Principles of a Constitutional Code*, vol. ii. p. 267 *et seq.*, in which he gave a succinct account of the principal arrangements contained in the Code upon which he was then engaged.

Mr Bentham's original intention was to have published the Constitutional Code in two volumes, but he subsequently determined to divide it into three, according to the table of contents which is here prefixed to the work. The first volume was printed in 1827. Of the second volume, the first Chapter only (being Ch. x. of the whole work) was printed in 1830, and together with the first volume published during that year. This was all that Mr Bentham lived to see in print, a delay having occurred in the completion of Ch. xi. At the time of his decease, Chapters xi. and xii. were nearly ready for the press, but the latter part of the work,

* Essay on the Influence of Time and Place in matters of Legislation. 1782. Part i. of this Collection, p. 185.

† In 1830, after the Three Days' Revolution, Mr Bentham addressed a letter to his French fellow-citizens on the same subject, vol. iv. p. 411 *et seq.*, and the question of a second legislative chamber is also discussed in the first Book of the present Code.

was in a very imperfect state, and several alterations and additions became necessary in the Table of Contents as penned by Mr Bentham. The work was written between the years 1820 and 1832.

In the preface to the first volume, mention is made of a quantity of unarranged matter as being in existence, relating to the various forms of government, and their respective degrees of eligibility. It was Mr Bentham's wish to have formed this matter into an Introductory Dissertation, and prefixed it to the Code. Upon examination, however, it was found to comprise a much more extensive range than that above indicated, and I therefore determined to form it into a distinct Book, the three volumes of the Code itself, as arranged by Mr Bentham, forming a second Book.

The MSS. of this part of the work were very voluminous, having been written at various times between the years 1818 and 1830: the greater portion of them were in a very confused and unfinished condition, and none of them had ever been revised. The plan adopted in arranging and classifying them in their present order, was,—to incorporate into one chapter all that related to the same subject-matter; to place those chapters first, which were of most general application, and to make those follow, which discussed more particularly the leading provisions of the Code itself, and constituted as it were, a general Rationale to the whole work.

The introductory chapters on Law in general, and the various branches of law, were apparently designed by Mr Bentham to give to the reader of the Constitutional Code, a clear and comprehensive idea of a complete body of law, or as he called it, the *Pannomion*. With this view therefore they have been inserted, although, in his early works, some of the subjects to which they refer have been already discussed. I would refer in particular to the *Principles of the Civil Code*, edited by Dumont.

In several instances it will appear that the same ground has been travelled over more than once. This was, however, necessary, in order to render the argument in each instance complete: for it will be observed that many of the Chapters constitute in themselves distinct and independent Essays: such, for example, are the masterly analyses of Good and Bad Rule, Corruption, and Factitious Honour.

It has frequently been urged as an objection against the adoption of any code of laws, that, inasmuch as every possible case cannot be provided for, the code itself will soon be swallowed up by commentaries and reported cases: and the *Code Civil* of France, with its multifarious commentaries, is quoted in support of the objection. By a very simple contrivance Mr Bentham has entirely obviated this difficulty. As often as any article of the Code shall appear not to be sufficiently comprehensive, or explicit, the Judge will propose an amendment in terms, which will afterwards become law, and so be incorporated in the Code, or not, according to the will of the Legislature.* By this means, the rule of action will be preserved from being enveloped in that inextricable confusion, and consequent doubt, which renders a knowledge of it, in this country, scarcely attainable, even to those who devote their whole lives to its study.

Taken altogether, this is undoubtedly Mr Bentham's greatest, as it was his latest work.† No branch of the science of legislation has he left untouched; no part, however minute, of the business of government, whether administrative or judicial, has escaped the grasp of his powerful mind.

The Chapter on Defensive Force, previously to its being printed, was perused by three of Mr Bentham's military friends of great experience, each of them holding the rank of lieutenant-colonel in the English army: and some valuable notes which were added by one of them, will be found at the end of the Chapter.

Under the head of Collectanea for the Constitutional Code, I found several private communications, and extracts from various publications: having arranged them under the different titles in the work, to which they seemed to refer, I have formed them into an Appendix.

RICHARD DOANE.

LONDON, *Sept.* 1841.

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* See Book ii. Ch. xii., JUDICIARY COLLECTIVELY, Sect. 20, *Judges' eventually emendative function.*

† Several pages of Ch. xii. in the second Book, were written by Mr Bentham on the 9th, 10th, and 11th May, 1832; but a few days before he died.

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CONSTITUTIONAL CODE.

BOOK I.

PREFACE.

To the whole contents of this proposed code, one all-comprehensive objection will not fail to be opposed. In whatever political community, by which it were adopted, it would, to a greater or less extent, probably to a very large extent, involve the abolition of the existing institutions.

But, by whomsoever this unquestionable truth is put forward in the character of an objection, let it be understood what the confession is which is involved in it. It is,—that among the institutions, to which the objector is thus giving his support, there exist in an indefinite number, those, of the mischievousness of which he is himself fully conscious,—that, in what he is thus endeavouring at, he therefore acts, to his own full knowledge, the part of an enemy to the community to which he belongs, and for whose welfare he pretends to be solicitous.

The more absurd, the more mischievous the more abundantly productive of human misery in every shape, an institution or set of institutions, is, in the defence of which he is thus acting, the more necessarily is he reduced to have recourse to this mode of defence, and cry out against the subversion of ancient institutions. Suppose an institution, like that, for example, of sacrificing men to idols, as in ancient Mexico; or tormenting and slaughtering them for sport, as in modern Ashantee,—the most shameless corruptionist would not dare to stand up in defence of it, taken by itself. But neither for the defence of this institution, nor of any other still more atrocious, if any such were conceivable, would a corruptionist or lawyer in this or any other country, be wanting, if in so doing, they beheld any prospect of success; and unhappily, such is the weakness of human nature, that there are many down to this time, upon whom such a defence would make a great impression.

Such as it is, the present legislative draught is the first in point of time, in which any such additament as a *rationale* was ever inserted. Now that it does exist, the utility of its existence will not be matter of dispute. Of its non-existence hitherto, two causes may be assigned. In every government, not having for its object the greatest happiness of the greatest number,—want of inclination and want of ability both together. In a government, having for its object the greatest happiness of the greatest number, on the part of the leading class, namely, the lawyer class, want of inclination as to all three branches of the Pannomion, except the constitutional branch; and in relation to all three branches, and even that branch in particular, want of ability; want of that anticipation of ability, which being necessary even to the bare endeavour, is still more plainly so, to correspondent success. Nor need the deficiency of ability be an object of surprise. Wherever adequate motives are wanting, actions will be wanting likewise; physical desires out of the question, where motives are wanting, desires are naturally wanting; and with desires, endeavours. The quantity of labour necessary has been such as to fill up the ordinary capacity of a whole life; and in return for this burthen, what was the benefit that could by any one be expected?

Thus much as to legislators and legislative draughts. In regard to expositors and commentators, the absence of everything in the shape of a Rationale has not been thus entire. Fragments of the sort of work have even been seen in abundance. Of a Rationale, yes; but of what sort? Of a sort which, perhaps, not altogether without truth, may be pronounced worse than useless. Instead of *giving* existence to the arrangements, the Rationale has *derived* its existence from them. In the breast of the ruler, self-interest has given existence to the arrangements; in the breast of the commentator, self-interest has again given birth to the Rationale. To the only right and proper problem which the case admits of, has been substituted an opposite one. Right and proper problem,—to ascertain in each case that arrangement, which is, in the highest degree, contributory to the greatest happiness of the greatest number. Sinister problem, which has almost uniformly been substituted,—to ascertain, in each case, that arrangement, which, under existing circumstances, has, in the highest degree, the approbation of those, in whose hands is, in the greatest quantity, the disposal of the matter of reward in all its branches.

The political states, for the use of which this code is principally designed, are those in whose instance the existing form of government is republican.

To no inconsiderable extent, and in no inconsiderable detail, the features of inaptitude, or in a word the abuses, of the English form of government are brought to view. Useful and highly instructive, however, with reference to the main purpose, will this exposition be, as well as to what may be considered as

an additional, though collateral purpose. For a republic it may serve, the whole of it together, at any time. For England, (independent of any such sudden revolution as, under the provocations given, will be always upon the cards,)* it may, in proportion as it is well adapted to its purpose, be of use in giving direction to the views of all such persons as may feel disposed to occupy themselves in the effecting of melioration by gradual changes, which, in so far as they are conducive to the professed end, will be so many approaches towards republicanism. To the establishment of a republican form of government, which is the term and *ne plus ultra* on the one hand, as a purely monarchical form of government is on the other, it will apply acceleration or retardation,—or the maximum of retardation, to wit, final prevention, according to circumstances; but in neither can the effect of it, in so far as it has any, fail of being productive of good. Prevention, is that the result? The good produced will, in that case, be pure from evil; but the arrival of the maximum of good, will either not take place at all, or not till at the end of a length of time more or less considerable. Retardation, is that the result? The number of persons excluded from a participation in the maximum of good will be the greater; but the good will be pure from admixture with evil in those shapes which are inseparable from all change, preceded by hostile contention, or sudden and uncompensated transfer of property or power.

In proportion as, of the arrangements here proposed, and the reasons on which they are grounded and by which they are explained and justified, or at least endeavoured to be justified, application is made to the corresponding arrangements, made by English law or English practice, the reader will observe, that from first to last, with few or no exceptions, nothing can be more opposite.

For expressing the cause of this contrariety, few, indeed, are the words that will be found sufficient. In each case the contrariety will be found to have one and the same cause, namely, the nature of the end in view; that end being, in each one of the two cases, the direct opposite of that which it is in the other. In the here proposed code, of every proposed arrangement, from first to last, without any one exception, the end in view is the greatest happiness of the greatest number. Of the several arrangements in the English system, in no one instance has the greatest happiness of the greatest number been the end in view. At all times,—on every occasion,—in every instance, the end actually pursued by the several sets of rulers, has been the promotion of the particular, and thence sinister, interest of these same rulers. Look the world all over, in no one place,—at no one time, has any arrangement of government had for its object, any other object than the interest of those by whom it has been made. In this case as in every other, in so far as the felicity of the greatest number has been the result, the cause of its being so, is, that in the particular case in question, whilst seeking the insurance of their own personal felicity, it was not in their power to avoid seeking the insurance of the felicity of the greatest number.

But under the English government, not to speak of others, those by whom the powers of government have been exercised, have at all times had an interest and a desire operating in direct opposition to those of their subjects; and having, by the supposition, the power in their hands, the corresponding power to give effect to that same interest and that same desire, such accordingly has been the consequence; the sacrifice of the interest and felicity of the greatest number to the particular and sinister interest of those same rulers.

In no instance has any benefit, the receipt of which, (if received by the governed,) would have been attended with any corresponding sacrifice in any shape on the part of the rulers, been conferred on the people but under a sense of necessity, and with reluctance: in no case, of design,—never but either of necessity or accident has any such benefit been the result.

Taking, therefore, the whole system of government, in all its parts, and more particularly the constitutional branch, never in the direct ratio, always in the inverse ratio of its strength, has been the felicity of the people.

At no time have the constituent members of the governing body, at no time has the monarch, at no time have the hereditary aristocracy, at no time have the proprietors of seats in the House of Commons,† at no time have the clergy, at no time have the judges, had any better endeavour or desire than to swell each of them his own power to its utmost possible pitch. To the weakness of the law taken in its totality,—to its weakness, and not to its strength, are the people indebted for everything in their condition, by which they are distinguished from that country in Europe, whatever it be, in which the people are in the most miserable degree oppressed. And this weakness, from what source has it arisen?—from the sinister interest and particular situation of the lawyer tribe.

Now for the first time is the invitation given to examine and discuss the most interesting of all temporal subjects, on the ground of a set of determinate and throughout mutually connected, and, it is hoped, consistent principles. Now for the first time to the subject-matter of this proposed examination and discussion, is given the form and method of the matter of a distinctive branch of art and corresponding science.

In so far as what is said is right and true, will be afforded the utmost facility of concep-

* Written in 1827.

† Written in 1821.

tion; to whatever is erroneous and false will be afforded a correspondent facility of and for detection and exposure.

The constitutional code is the first in importance, as on it will depend the matter of all the other codes.

As in the physical, so in the moral branch of the field of thought and action, parts still remain which may be stated as being as yet unexplored. In the political branch, in that subbranch of the moral, one topic is that which regards the rights and the obligations of one-half of the species—the female sex: the rights which it is fit they should possess, the obligations to which it is fit they should be subjected. This inquiry stretches itself over all three parts of the Pannomion—the constitutional, the civil, or right-conferring, and the wrong-repressing—or say the penal. Others there are which belong exclusively to the penal; but of these, the mention may, with more advantage, be reserved for the code to which as above, they belong.

Should it ever happen to the present work to be taken for the basis of the constitutional code of any nation, that which presents itself as the proper way of putting it to use, is this. In the code to which authority is given, insert the enactive part, and the ratiocinative and the expositive; eliminate the instructional and the exemplificational.

Why eliminate the instructional and the exemplificational?—Because neither of them has any other object than the giving assistance to the legislator in the task of composing the authoritative code, in the composition of which he will have derived from them such information as appears to him useful; and the remainder not being designed to serve as a rule of action for the people, need not, and therefore should not, lie as a burthen upon their pockets and their time.

Why insert the expositive and the ratiocinative? The expositive, because regarded as necessary to right interpretation; the ratiocinative as being assistant to right interpretation, and as helping to create and preserve in the minds of the people, a persuasion of the aptitude of the enactive, and a disposition to lend their assistance, as occasion calls, to the giving execution and effect to it, and as serving to produce the like persuasion in the breasts of legislators, present and future, and thereby preserve the law itself against changes from the better to the worse. Also, to create and preserve in the breasts of judges the disposition to act their parts in giving execution and effect to it.

Not for amusement assuredly, were the lists and explanations of the various subject-matters and functions, inserted in this code, any more than the like might be in an index or a dictionary. No more need, therefore, has the reader of this proposed code to read them in the order in which they stand, unless for some special use, any more than to read the same quantity of matter in the one or the other of those useful fruits of hard labour in the field of literature. Not for amusement but for substantial use. Subject-matters for the purpose of making as sure as the faculties of the labourer will admit, that nothing which the purpose required to be noticed had been left unnoticed, and for that of making the reader satisfied that everything which the purpose required to be noticed has been noticed accordingly.

The term functions has been employed for the sake of conciseness, correctness, clearness, and symmetry. But for this comprehensive denomination, where arrangements were intended to be the same, assemblages of words, more or less different from one another, would have been apt to have been employed in giving expression to them; and from this diversity in expression, diversity of meaning might, on each occasion, have naturally been inferred. But by a single word, with a few others, necessary to complete it into a proposition, less space by an indefinite amount will be occupied than would be occupied by any equivalent phrase of which this same word formed no part,—hence, in a proportionate degree, conciseness.

If in any one of these same instances, the word function, with the attribute connected with it, is the proper one, so by the supposition is it in every other: so much for correctness.

If in any one of these same instances, the import meant to be conveyed is clear, so will it be in every other. For, there being no obscurity in it on the first that occurs of those occasions, so neither can there be on any other. As little can there be any ambiguity. So much for clearness.

Symmetry, or say uniformity. That which, in relation to the multitude of objects, symmetry requires is, that each of them be presented to view in forms mutually agreeing; but no two forms that are in any particular different, can agree so well as the same form does with itself. And as to the order in which they present themselves, it will, on each occasion, be *that* which on that same occasion, is best adapted to the writer's purposes. Those objects which require to be put together will have presented themselves together in the compass of this single word, and in exactly the same form.

One error in practice there is, against which it seems necessary to give warning, it being at once so mischievous, so natural, and so common. This is, the depriving the people of the benefit of such parts of what is proposed as are not unsuitable to the existing form of government, on account of their contiguity to others which are unsuitable to it.

INTRODUCTION.

Section I.

First Principles described in General Terms.

To whatever portion of the field of thought

and action the literary work in question belongs, it has been found convenient, and is accordingly usual, to place at the beginning of it some opinion or opinions, embracing in their extent the whole of the portion in question, or as large a portion of it as may be.

On this occasion a number of expressions mutually related, are found needful or convenient, and are accordingly usually employed.

Take, for example, first principles, leading principle, first lines, outlines, positions, axioms, aphorisms.

If, in the composition of the work, the design be to recommend a certain course of action as proper to be pursued for the attainment of a certain end, thereupon come certain other words and phrases of correspondently extensive import. Of this sort are ends, objects of pursuit, means, obstacles,— helps, counterforces, acting in opposition to the obstacles.

Where the object of the inquiry and discussion is, what is the course of action which, with relation to the field in question, is proper to be pursued? a necessarily concomitant object of regard throughout is,—the course actually pursued: pursued in the community which the writer has in view.

If the course actually pursued is in all points the same with the course proper to be pursued, it is well; and unless on the supposition that, in default of apposite warning and instruction, a departure to an extent more or less considerable may have place, any work on the subject in question would be useless, and by him in whose opinion such coincidence has place, cannot consistently be undertaken.

In regard to some expressions, viz. course proper to be pursued, course not proper to be pursued; one matter of fact there is, which, on every occasion, it may be of use to the reader to have in mind. This is, that everything, of which any such phrase can be, in an immediate way the expression, is a certain state of mind on the part of him by whom the expression is employed; the state of his mind with relation to the subject-matter of the discourse, whatsoever it happens to be.

The state of mind will be the state of one or more of his intellectual faculties, in one word, his understanding,—or the state of his sensitive faculties, in one word, his feelings, or the state of his volitional faculties, in one word, his will, his desires, his wishes.

Thus in the case here at present on the carpet. When I say the greatest happiness of the whole community, ought to be the end or object of pursuit, in every branch of the law —of the political rule of action, and of the constitutional branch in particular, what is it that I express?—this and no more, namely that it is my wish, my desire, to see it taken for such, by those who, in the community in question, are actually in possession of the powers of government; taken for such, on the occasion of every arrangement made by them in the exercise of such their powers. so that their endeavours shall be, to render such their cause of action contributory to the obtainment of that same end. Such then is the state of that faculty in me which is termed the will; such is the state of those particular acts or modifications of that faculty, which are termed wishes or desires, and which have their immediate efficient causes in corresponding feelings, in corresponding pleasures and pains, such as, on the occasion in question, the imagination brings to view.

In making this assertion, I make a statement relative to a matter of fact, namely that which, at the time in question, is passing in the interior of my own mind;—how far this statement is correct, is a matter on which it belongs to the reader, if it be worth his while, to form his judgment.

Such then being the desire, truly or falsely expressed by me, but at any rate expressed by me—in his breast has that same desire a place? If so, then may it be worth his while to apply his attention to the course herein marked out by me, under the notion of its being correspondent, and contributory, and conducive to the attainment of that same end. On the other hand, if so it be, that that same desire has no place in his breast, on that supposition, generally speaking, it will be a useless trouble to him to pay any further attention to anything contained in it.

To this observation one exception, it is true, there is, and it is this, namely, that if the end in view, which it is his wish to see pursued, is different from this, it may be of use to him to take note of the arrangements herein proposed, as conducive to the end pursued by me, for the purpose of taking or recommending, such different and opposite arrangements as may prevent the attainment of the end proposed by me, and procure or promote the attainment of that other end, be it what it may, which is more agreeable to his wishes,—say, for example, the greatest happiness of some one member of the community in question, or of some other number smaller than the majority of the whole number of the members.

So again, when I say,—In the breast of every ruler, on the occasion of the arrangements taken by him in the field of government, the actual end or object of pursuit, has, in the instance of every such arrangement, been his own greatest happiness, and that, in such sort as that wherever in his judgment there has been a competition between his happiness; and that of all the other members of the community in question taken together, he has, on each occasion, given the preference to his own happiness over theirs, and used his endeavours to giving increase to his own happiness, in whatsoever degree the aggregate of their happiness may, in his judgment, be lessened by it,—in saying this, I have been exhibiting the state of my own mind, viewed in another point of view, viewed as it were in another part of it—my judgment, the judicial faculty. I have given that, as my opinion, an opinion of

which I am prepared to bring to view the efficient causes.

While I am so doing, I observe another writer who, on the score of my so doing, taxes me with egotism, or, to use another word, with dogmatism; meaning by dogmatism, the doing something which it is his wish, his desire, should not be done.

In answer to this charge what I say is, that either a man must do this, or he must forbear to write at all, for that it is not possible for a man to write without doing thus.

But this defence against the charge of dogmatism is not confined to self-defence against the charge of dogmatism: it has for its object the giving warning against that form of discourse to which the imputation expressed by the word dogmatism does really and properly attach.

In a work of self-biography, personality, called in English, when disapproved of, egotism, is at once unavoidable and agreeable. In a work on legislation, except in so far as it is unavoidable it is irrelevant, impertinent, and disagreeable. In a certain case, in the mouth of a public functionary, it is not only impertinent but insulting; and thereby, to every individual who is not by habit inured to insult, supremely disagreeable. This is where the rest of the community being brought upon the stage in the character of subjects of property, the speaker brings himself to view in the character of proprietor or owner of the property. Thus to speak is to spit in the face of every one who either hears or reads it.

The present is an occasion on which personality is unavoidable.

In saying, as above, the proper end of government is the greatest happiness of all, or, in case of competition, the greatest happiness of the greatest number, it seems to me that I have made a declaration of peace and good-will to all men.

On the other hand, were I to say, the proper end of government is the greatest happiness of some one, naming him, or of some few, naming them, it seems to me that I should be making a declaration of war against all men, with the exception of that one, or of those few.

Be the subject what it may, unless it be allowed to me to say, what, in relation to that subject, are my judgment, my feelings, or my desires, I cannot say anything in relation to it; and as to my judgment on each occasion, giving it, as I do, for no more than it is worth, it seems to me that it is on my part no unreasonable desire to be allowed—free from every imputation conveyed, or endeavoured to be conveyed, by the word dogmatism—to be allowed to give it.

This being the basis on which all legislation and all morality rests, these few words written in hopes of clearing away all obscurity and ambiguity, all doubts and difficulties, will not, I hope, be regarded as misapplied, or applied in waste.

Section II.

First Principles enumerated.

The right and proper end of government in every political community, is the greatest happiness of all the individuals of which it is composed, say, in other words, the greatest happiness of the greatest number. 1

In speaking of the correspondent first principle, call it the greatest-happiness principle.

In speaking of this end of government, call it the right and proper end of government.

The *actual* end of government is, in every political community, the greatest happiness of those, whether one or many, by whom the powers of government are exercised.

In general terms, the proof of this position may be referred to particular experience, as brought to view by the history of all nations.

This experience may be termed *particular*, inasmuch as the particular class of rulers is the only class concerned in it, to which it bears reference. This may be called the experimental or practical proof.

For further proof, reference may be made to the general, indeed the all-comprehensive, principle of human nature. The position which takes this fact for its subject, may be termed an axiom, and may be expressed in the words following.

In the general tenor of life, in every human breast, self-regarding interest is predominant over all other interests put together. More shortly thus,—Self-regard is predominant,—or thus,—Self-preference has place everywhere.

This position may, to some eyes, present itself in the character of an axiom: as such self-evident, and not standing in need of proof. To others, as a position or proposition which, how clearly soever true, still stands in need of proof. 2

To deliver a position in the character of an axiom, is to deliver it under the expectation that, either it will not be controverted at all, or that he by whom it is controverted, will not, in justification of the denial given by him to it, be able to advance anything by which the unreasonableness of his opinion or pretended opinion, will not be exposed. Of this stamp are the axioms laid down by Euclid. In the axioms so laid down by him, nothing of dogmatism will, it is believed, be found.

By the principle of self-preference, understand that propensity in human nature, by which, on the occasion of every act he exercises, every human being is led to pursue that line of conduct which, according to his view of the case, taken by him at the moment, will be in the highest degree contributory to his own greatest happiness, whatsoever be the effect of it, in relation to the happiness of other similar beings, any or all of them taken together. For the satisfaction of those who may doubt, reference may be made to the *existence* of the species as being of itself a proof, and

that a conclusive one. For after exception made of the case of children not arrived at the age of which they are capable of going alone, or adults reduced by infirmity to a helpless state; take any two individuals, A and B, and suppose the whole care of the happiness of A confined to the breast of B, A himself not having any part in it; and the whole care of the happiness of B confined to the breast of A, B himself not having any part in it, and this to be the case throughout, it will soon appear that, in this state of things, the species could not continue in existence, and that a few months, not to say weeks or days, would suffice for the annihilation of it.

Of all modes in which, for the governance of one and the same individual, the two faculties could be conceived as placed in different seats,—sensation and consequent desire in one breast, judgment and consequent action in another, this is the most simple. If, as has with less truth been said of the blind leading the blind, both would, in such a state of things, be continually falling into the ditch; much more frequently, and more speedily fatal, would be the falls, supposing the separation to have place upon any more complex plan. Suppose the care of the happiness of A being taken altogether from A, were divided between B and C, the happiness of B and C being provided for in the same complex manner, and so on; the greater the complication, the more speedy would the destruction be, and the more flagrant the absurdity of a supposition, assuming the existence of such a state of things.

Note that, if in the situation of ruler, the truth of this position, held good in no more than a bare majority, of the whole number of instances, it would suffice for every practical purpose, in the character of a ground for all political arrangements; in the character of a consideration, by which the location of the several portions of the aggregate mass of political power should be determined; for, in the way of induction, it is only by the greater, and not the lesser number of instances, that the general conclusion can reasonably be determined; in a word, mathematically speaking, the probability of a future contingent event, is in the direct ratio of the number of instances in which an event of the same sort has happened, to the number of those in which it has not happened; it is in this direct ratio, and not in the inverse.

If such were the condition of human beings, that the happiness of no one being came in competition with that of any other,—that is to say, if the happiness of each, or of any one, could receive increase to an unlimited amount, without having the effect of producing decrease in the happiness of any other, then the above expression* might serve without limitation or explanation. But on every occasion, the happiness of every individual is liable to come into competition with the happiness of every other. If, for example, in a house containing two individuals, for the space of a month, there be a supply of food barely sufficient to continue for that time; not merely the happiness of each, but the existence of each, stands in competition with, and is incompatible with the existence of the other.

Hence it is, that to serve for all occasions, instead of saying the greatest happiness of all, it becomes necessary to use the expression, the greatest happiness of the greatest number.

If, however, instead of the word *happiness*, the word *interest* is employed, the phrase *universal interest* may be employed as corresponding indifferently to the interest of the greatest number, or to the interest of all.

In the eyes of every impartial arbiter, writing in the character of legislator, and having exactly the same regard for the happiness of every member of the community in question, as for that of every other, the greatest happiness of the greatest number of the members of that same community, cannot but be recognised in the character of the right and proper and sole right and proper end of government, or say, object of pursuit.

For the designation of the opposite, or reverse of what is right and proper, the term sinister may, in consideration of the relation borne to each other by the two terms, taken in their original physical sense, be employed.

Accordingly, in so far as between the happiness of the greatest number, and the happiness of any lesser number, any incompatibility or successful competition is allowed to have place, it may be styled a *sinister* end of government, or say, object of pursuit.

If as above, so it be, that in the situation of a ruler, whatsoever that situation be, the conduct of no man can reasonably be expected to be governed by any interest that stands, at that same moment, in opposition to that which, in his conception, is his own individual interest, it follows, that for causing it to take that direction, in which it will be subservient to the universal interest, the nature of the case affords no other method, than that which consists in the bringing of the particular interest of rulers into accordance with the universal interest.

Here, then, we have a third principle of the first rank, in addition to the two former ones. Call it, the *means-prescribing*, or *junction-of-interests-prescribing*, principle.

The first declares, what *ought to be*, the next, what *is*, the last, the *means* of bringing what is into accordance with what ought to be.

Meantime, this junction of interests, how can it be effected? The nature of the case admits but of one method, which is, the destroying the influence and effect of whatever sinister interest the situation of the individual may expose him to the action of; this being

* Viz. the greatest happiness of *all*. See the ensuing paragraph.—*Ed.*

accomplished, he will thereby be virtually divested of all such sinister interest; remains, as the only interest whereby his conduct can be determined, his right and proper interest, that interest which consists in the share he has in the universal interest, which is the same thing as to say, that interest, which is in accordance with the universal interest, taken in the aggregate.

Be the act what it may, there are two modes, in either of which a man may be divested of the interest requisite to his performance of it: one is, the overpowering the force of whatsoever body of interest may be acting on him, in a direction tending to engage him in the performance of it, by a stronger counter-interest; this is the *direct* mode. The other is, the divesting him of the power of performing that same act; for that which, in his own eyes, it is not in a man's power to perform, it cannot, in his own eyes, be his interest to endeavour to perform; it can never be a man's interest to expend time and labour without effect. Considered in its application to a man's interest, this mode may be termed an *indirect* mode.

Thus it is, that by one and the same arrangement, application may be made to the power and the will at the same time, and in either mode the requisite junction of interests is capable of being effected or promoted.

A question that now immediately presents itself, is, whether to any individual, supposing him invested by the constitution in question with the supreme power, any inducement can be applied, by that same constitution, of sufficient force to overpower any sinister interest, to the operation of which, by his situation, he stands exposed? Inducements, operating on interest, are all of them reducible to two denominations,—punishment and reward. Punishment in every shape his situation suffices to prevent his standing exposed to; so likewise reward. Being by the supposition invested with supreme power, the matter of reward cannot be applied to him in any shape, in which he has not already at his command, whatever it would be in the power of the constitution, by any particular arrangement, to confer on him. To him who has the whole, it is useless to give this or that part.

To a question to this effect, the only answer that can be given is sufficiently manifest. By reward, an individual so situated cannot be acted upon; for there exists no other individual in the community at whose hands he can receive more than he has in his own. By punishment as little; for there exists no individual at whose hands he is obliged to receive, or will receive any such thing.

The result is, that in a monarchy no such junction of interests can be effected, and that, therefore, by no means can monarchy be rendered conducive to the production of the greatest happiness of the greatest number; nor, therefore, according to the greatest happiness-principle, be susceptible of the denomination of a good form of government.

What, then, is the best *form* of government? This question may itself be clothed in an indefinite number of forms. What is the most eligible? what is the most desirable? what is the most expedient? what is the most right and proper? and so on. In whatsoever form clothed, it is resolvable into these two:—What is the end to which it is your will to see the arrangements employed in the delineation of it directed? What are the several arrangements by which, in the character of *means*, it is your opinion that that same end, in so far as attainable, is most likely to be attained?

To write an answer to this question—to write on the subject which it holds up to view—is virtually, is in effect, from beginning to end, to write an answer to one or other, or both of these questions.

To the first, my answer is,—the greatest happiness of all the several members of the community in question, taken together, is the end to which it is my desire to see all the arrangements employed in the delineation of it directed. *That* being taken for the end, to which it is right and proper that all legislative arrangements be directed, my opinion is, that so far as they go, the proposed arrangements which here follow would be in a higher degree conducive to it than any other could be, that could be proposed in a work which was not particularly adapted to the situation of any one country, to the exclusion of all others.

Should it be asked, *What* is the community which, by the description of the community in question, you have in view? my answer is,—any community, which is as much as to say every community whatsoever.

Should it be asked, *Why* is it your desire that the greatest happiness of all the several members of the community in question should be the end to which all the several arrangements employed in the delineation of the form of government, by which that same community is governed, should be directed? my answer is,—because on the occasion in question, such is the form, the establishment of which would in the highest degree be contributory to my own greatest happiness.

Should it again be asked by any man, What proof can you give of this? what cause can any other person have for regarding as probable that what you are thus saying is conformable to truth? the only answer which would not be irrelevant, impertinent, egotistical, is this: Behold, for proof, the labour it cannot but have cost me to give expression to these several arrangements, and the so much greater labour which it cannot but have cost me to bring to view the reasons which stand annexed to them,—reasons which have for their object the causing them to be adopted and made law by the persons to whom, in the several communities, the power of determining on every occasion what shall be taken for law,

and have the force of law, depends; viz. by showing that on each subject they are in a higher degree conducive to that end than any others that could be proposed.

In saying thus much, I have already laid down what, in my view of the matter, are the two positions, of which, in the character of first principles, the whole sequel of this work will be no more than the development and the application.

These principles are the greatest happiness-principle and the self-preference principle.

CHAPTER I.

GENERAL DIVISION OF THE AGGREGATE BODY OF THE LAW.

On viewing the aggregate of that which in any country has the force of law, it will be found divisible, in the first place, the whole of it, into two portions or branches, viz. in the first place, that in which the rule of action is laid down simply and absolutely, without reference to the functions of any such members of the community as those whose business it is, under some such name as that of judges, or ministers of justice, to secure the observance of it; in the next place, that in which a description is given of the course to be taken by those same official persons for securing the observance of, and giving execution and effect to, the several arrangements contained in that same main or substantive branch. This branch may be distinguished by the name of the adjective branch, or law of judiciary procedure.

The main or substantive portion, or branch of the law, may again be distinguished into two portions or branches. In the first place, that in which individuals are considered separately only, and in their private capacity. This may be distinguished by the name of private law. In the next place, that in which individuals are regarded collectively, and in some public capacity, with a view to the powers necessary to be exercised by some of them over others, for the good of the whole. This branch may be distinguished by the name of public or constitutional law.

The law cannot in any part of it operate without doing more or less towards the making distribution of benefits and burthens.

Burthens it may distribute or impose without distributing or conferring benefit, in any shape. Benefit in any shape it cannot confer, without, at the same time, imposing burthen in a correspondent shape, either on the individual benefited, or intended to be benefited, or on some other or others, most commonly even on all others, with little or no exception.

The whole body of the law may again, by another division, derived from the source just mentioned, be distinguished into two branches, viz. that which is occupied in the description of the distribution intended to be made of benefits and burthens respectively as above. This branch may be styled the distributive branch of law. It is that which is occupied in the description of the arrangements for giving effect to such distribution, by furnishing individuals with inducements adequate to the purpose of rendering their conduct conformable to the plan of distribution so marked out. Of the inducements thus employed, some will be of a disagreeable nature, and thus come under the notion of burthens; others of an agreeable nature, and thus come under the notion of benefits.

That branch of law, the arrangements of which are occupied in the application of burthens to the purpose of securing conformity to the arrangements made by the distributive branch of law, is distinguished by the name of penal law.

That branch of law, the arrangements of which are occupied in the application of benefits to the purpose of securing conformity to the arrangements made by the distributive branch of law, may be distinguished by the name of the remuneratory or remunerative branch of law.

Of the whole body of actual law one pre-eminently remarkable division, derived from a correspondently remarkable source, and pervading the whole mass, still remains. It is that by which it is distinguished into two branches—the arrangements of one of which are arrangements that have really been made—made by hands universally acknowledged as duly authorized, and competent to the making of such arrangements, viz. the hands of a legislator-general, or set of legislators-general, or their respective subordinates. This branch of law may stand distinguished from that which is correspondent and opposite to it, by the name of *real* law, really existing law, legislator-made law;—under the English Government it stands already distinguished by the name of *statute* law, as also by the uncharacteristic, undiscriminative, and, in so far improper appellation, of *written* law. The arrangements supposed to be made by the other branch, in so far as they are arrangements of a general nature, applying not only to individuals assignable, but to the community at large, or to individuals not individuals assignable, may stand distinguished by the appellations of unreal, not really existing, imaginary, fictitious, spurious, judge-made, law. Under the English Government the division actually distinguished by the unexpressive, uncharacteristic, and unappropriate names of *common* law and *unwritten* law.

Of the manner in which this wretched substitute to real and genuine law is formed, take this description. In the course of a suit in which application is made of the rule of action thus composed, the judge, on each occasion, *pretends* to find ready made, and by competent authority, endued with the force of law, (and at the same time, universally known to be so

in existence, and so in force,) a proposition of a general aspect, adapted to the purpose of affording sufficient authority and warrant for the particular decision or order, which on that individual occasion he accordingly pronounces and delivers.

Partly from the consideration of the general propositions so framed, as above, by this or that judge, or set of judges; partly from the consideration of the individual instruments or documents expressive of such individual decision or order, as above; partly from the consideration of such discourses as have been, or are supposed to have been, uttered whether by the judges or by the advocates on one or both sides,—a class of lawyers have, under the names of general treatises, or reports of particular cases, concurred in the composition of an immense chaos, the whole of it *written*, and a vast portion of it printed and published, constituting an ever-increasing body of that which forms the matter, which passes under the denomination, of unwritten law.

CHAPTER II.

CONSTITUTIONAL LAW.

In every community in which a constitutional code, generally acknowledged to be in force, is in existence, a really existing constitutional branch of law, and with it, as the offspring of it, a constitution, is so far in existence.

In no community in which no constitutional code thus generally acknowledged to be in force, is in existence, is any such branch of law as a constitutional branch, or any such thing as a constitution, really in existence.

In a community in which, as above, no such thing as a constitution is really to be found, things to each of which the name of a constitution is given, are to be found in endless multitudes. On each occasion, the thing designated by the phrase "the constitution," is a substitute for a constitution,—a substitute framed by the imagination of the person by whom this phrase is uttered, framed by him, and, of course, adapted to that which, in his mind, is the purpose of the moment, whatsoever that purpose be; in so far as that purpose is the promoting the creation or preservation of an absolutely monarchical form of government, the constitution thus imagined and invented by him is of the absolutely monarchical cast; in so far as that purpose is the promoting the creation or preservation of a limitedly monarchical form of government, it is of the limitedly monarchical cast; in so far as the purpose is the creation or preservation of a democratical form of government, it is of the democratic cast.

The Anglo-American United States have a constitution. They have a constitutional code; the constitution is the system of arrangements delineated in that code.

It has for its object the greatest happiness of the greatest number, and in pursuit of that object, the powers of government are allotted by it to the greatest number.

The French and Spanish nations have constitutions. The English monarchy has no constitution, for it has no all-comprehensive constitutional code, nor in short, any constitutional code whatsoever generally acknowledged as such; nor by any one individual of the whole community acknowledged as such. Hence, so it is, that of the assertion contained in the phrases, "excellent constitution,"—"matchless constitution," an assertion by which every endeavour to produce the effect of the worst constitution possible is so naturally accompanied, no disproof can be opposed otherwise than by the assertion of a plain and universally notorious matter of fact, viz.—that the English people have no constitution at all belonging to them. England, not having any constitution at all, has no excellent, no matchless constitution; for nothing has no properties. If ever it has a constitution, that constitution will most probably be a democratical one; for nothing less than an insurrection on the part of the greatest number, will suffice to surmount and subdue so vast a power as that which is composed of the conjunct action of force, intimidation, corruption, and delusion.

The constitutional branch of law, is that branch, by which designation is made of that person, or those persons, to whose power it is intended, that on each occasion, the conduct of all the other members of the community in question shall be subjected.

The power which is here conferred is the supreme power.

Of the supreme power thus designated, that is to say, of the aggregate of the operations by which the exercise of it is performed, there are, of necessity, two perfectly distinct branches, the operative and the constitutive: the operative, is exercised by the declaration made of the all-directing will above alluded to; the constitutive, is exercised by the determination made of the individual or individuals, by whom the operative power is exercised.

Constitutional law has for its object, security against misrule; security against those adversaries of the community, in whose instance, while their situation bestows on them the denomination of rulers, the use they make of it, adds the adjunct evil, and thus denominates them evil rulers.

In a code of constitutional law, as has been already observed, arrangements of two different complexions must have place; one set of the nature of those belonging to the distributive or civil branch of law, having for their occupation the distribution of the powers of government, with the opposite and correspondent burthens: the other set presenting a penal aspect, having, for their occupation, the giving a description of a particular class of crimes, and of the means employed against

them, in the character of remedies. But that the thread may not be interrupted, convenience recommends the placing what belongs to these crimes, in company with what belongs to others, in the penal code. On the occasion of ordinary offences, the persons against whose mischievous enterprises, the security is to be afforded, are individuals at large. On the occasion of this particular class of crimes, to individuals considered in the character of subjects are added, or substituted, individuals considered in the character of rulers. This distinction, the draughtsman will, when occupied on the penal code, at all times keep in view.

In the situation of a ruler as such, in a monarchy, no act that he can commit, be it in ever so high a degree mischievous, wears the denomination of a crime: king, or by what other denomination designated, a ruler can do no wrong. For the same evil act which, if committed by a subject, would be wrong, becomes, by the mere circumstance of its being committed by a ruler, not wrong, but right.

So far as it wears the complexion of penal law, constitutional law has these two for its distinguishable and contrasted objects: first, the ordering matters so, that those who, to some purposes and on some occasions, occupy the situation of rulers, shall, in respect of their conduct in that and other situations, be liable to be dealt with, in the character of offenders, delinquents, criminals: could the ordering matters so, that to acts done in resistance to, or for prevention of, misrule, and thence productive of more good than evil,—to such acts, of whatever penal denomination they may appear susceptible, no such punishment, if any, shall be allotted, as might, with propriety, be allotted to them, if the application of them to the prevention of misrule had no place.

Under an absolute monarchy, the constitutional branch of the law has, for its sole actual end, the greatest happiness of the one individual, in whose hands without division, the whole of the supreme operative power is lodged.

For decency's sake, the end thus actually and exclusively pursued, is not the end professed and declared to be pursued. For the designation of the end actually pursued, regard for decency and conciseness, substitutes, on each occasion, one or another of a small assortment of phrases: preservation of order, preservation of legitimacy, for example.

Under a limited monarchy, the constitutional branch of law has, for its actual object, a more complex object; viz. the greatest happiness of the monarch, coupled with, and limited by, the greatest happiness of the conjunctly or subordinately ruling few, by whose respective powers the limitations that are applied to the power of the monarch, are applied.

Under a representative democracy, the constitutional branch of law has, for its actual end, the greatest happiness of the greatest number.

Accordingly, so far as it exists in the utmost degree of perfection which the nature of the case admits of, the right of indicating, by the respective suffrages, among what individuals the supreme operative power shall be shared, is exercised by *all*. The concurrence of all in the effective designation of the individual, by whom the share in question in the operative power shall be possessed, not being possible, wherever the wishes of one part of those by whom the suffrages are given, point to one person, while the wishes of another part point to another, the next most desirable result, with reference to the greatest happiness of the greatest number, is, that instead of being exercised by the whole number, the power shall be exercised by the greater part of it; such being the most desirable result, such accordingly is the actual result.

In a representative democracy, the exercise of this designative power is performed by human judgment; under a monarchy, it is performed by fortune or providence;—the cause being the same, and that cause out of the reach of our knowledge, each man may, on each particular occasion, do as he is accustomed to do, employ that one of the two terms, which, on that occasion, is regarded by him as best suited to his purpose. Under the exercise made of this power by fortune, the supreme operative power finds itself, at the death of the last possessor, in the hands of the only child, or, in case of children more than one, living at that moment,—of the first born, of the children of a certain woman: the power of removal is, under the direction of fortune, providence, or (by accident,) human judgment, exercised by death.

In so far as the power of appointment is thus exercised by fortune or providence, no degree of relative inaptitude, short of universally manifest and complete insanity of mind, has the effect of preventing the operative power from finding itself lodged in the hands thus designated and appointed: no degree of inaptitude, short of that produced by insanity as above, takes the power of removal out of the hands of death.

The persons in whose hands is lodged the supreme operative power, as also those in whose hands the supreme designative power, (appointment and removal included,) is lodged, being determined, what remains for the matter of the constitutional code, is the declaring in what manner the power and functions of the persons, in whose hands the designative power is lodged, shall be exercised: as likewise the marking out into a number of distinct branches, the whole mass of subordinate power.

A constitutional code might, in a certain sense, be said to be complete, if neither any distribution of operative power among subordinate authorities, nor any mode of appointment or removal in relation to the possessors of any such subordinate power, were contained

in it. For by the description given, as above, of the supreme power, and the provision made as above, for the exercise of the designative power, with relation to the possessors of that same supreme operative power, provision would be made for all such subordinate arrangements, as above, as it might be the pleasure of the possessors of those two branches of the supreme power, to concur in the making of.

CHAPTER III.

CIVIL OR DISTRIBUTIVE LAW.*

SECTION I.

General Object.

Of law in general, and of this branch in particular, the principal object is to give security to rights; viz. to such as it finds in existence, and such others, as under and in virtue of such arrangements as it finds in existence, are, from time to time, successively brought into existence; to wit, either by such events as take place without the operation of human will, such as deaths and other casualties, and the produce of the elements of the three kingdoms of nature,—the mineral, the vegetable, and the animal; and such as are brought into existence by the operation of the human will, such as voluntary contracts, and ordinances of the administrative branch of government.

In comparison with the security thus afforded for rights in general, such benefits as belong to this or that one of the three remaining heads, under one or other of which, all the as-yet-unmentioned benefits, which it is in the nature of government to confirm or secure, may be classed, are but of secondary importance; to wit, subsistence, meaning incidental arrangements for securing national subsistence against incidental causes of failure; abundance, meaning continual increase to that which is a common matter of subsistence and abundance; and equality, meaning the giving to the several masses of the matter of wealth in the possession of different individuals, such approach and perpetual tendency to absolute equality, as shall not be inconsistent with the security which ought to be afforded to the rights relative to property, and the rights relative to condition in life.

Security, subsistence, abundance, and equality,—by these then will be presented to view the several subordinate or particular ends, most immediately in contact with, and branching out from, the only legitimate and universal end of government.

Neither in the import of the word subsistence, nor in the import of the word abundance, is any relation to futurity necessarily involved. In the import of the word security, that relation is constantly and necessarily involved: the present being at all times but a point, the word security can never present itself without presenting to view one point at least, which is neither the present nor the past.

SECTION II.

Security.

First on the list of benefits which the civil branch of the law is occupied in distributing, is security.

Security may be considered with reference to the objects which are secured, and with reference to the objects against which they are secured.

Taking human beings individually considered, these are the only real entities considered as being secured. But when a particular and practical application comes to be made of the word security, certain names of fictitious entities* in common use must be employed to designate so many objects, to and for which the security is afforded. Person, reputation, property, condition in life,—by these four names of fictitious entities, all the objects to which, in the case of an individual, the security afforded by government can apply itself, may be designated.

Security has for its adversaries, against whose enterprises it is to be afforded, three classes of persons differently situated and denominated, viz. foreign adversaries considered as such, foreigners considered in so far as they are, or are liable to become, adversaries; rulers, viz. of the country in question considered in that same light; and fellow-citizens, or fellow-subjects, considered in that same light.

As to the acts against which security is to be afforded, and by which, in so far as they are performed, security is broken in upon and lessened, they are in themselves and their immediate effects, the same by which soever of the three species of adversaries they are exercised. Taken, however, in the aggregate, they are wont to be designated by a different denomination, according to the situation of the class to which the person or persons by whom they are exercised, is considered as belonging. If to that of foreign adversaries, they are denominated acts of hostility: if to that of domestic adversaries, considered in the character of rulers, acts of oppression—or, if the oppression be considered as to a certain degree flagrant, acts of tyranny; if to that of domestic adversaries, considered in the character of subjects, acts of delinquency.

The case of foreigners, and also the case of rulers, are treated of elsewhere. Remains the case in which the persons against whose enterprises security is to be afforded, are considered in the character of subjects.

In this instance, the principal and leading operation by which the security is afforded, consists in giving, to the several distinguish-

* Some of the subjects of this chapter will be found discussed in the Pannomial Fragments, vol. iii. p. 224, *et seq.*

† For an explanation of this division of entities see vol. viii. p. 195, *et seq.*

able acts by which the security, considered as applied to the several sorts of possessions, is considered as being broken in upon and lessened, the denomination and character of so many different *offences*, considered with reference to the persons engaged in the exercise of those acts.

But so nice and difficult of apprehension is, in many cases, the distinction—on the one hand, between one mode of delinquency and another—on the other hand, between the several modes of delinquency and innocence; and so inadequate to the purpose of conveying, in this case, a clear, correct, and complete conception of the object denominated, is any single word, of which a denomination can be composed,—that to each such denomination, it is altogether necessary that a definition be subjoined, or, to speak more extensively, an exposition; as also, on the occasion of each such exposition, a portion of explanatory matter applied to the several distinguishable terms of which it is composed.

Were nothing further necessary to the purpose, the list of these several definitions (considered as being so many instruments employed in the process of affording security against so many acts, by the exercise of which security is broken in upon and lessened) might, without any apparent impropriety, be allotted to the branch of law here in question. But such are the temptations by which, in the instance of each such offence, men are liable to be invited to the exercise of it, that unless, for the purpose of restraining them from the commission of those acts respectively, inducements of the nature of punishment were employed and announced, every such definition so sent abroad without support, would be a dead letter, and as such, be without effect. Penal law is, therefore, the branch of law which occupies itself in the distribution of burthens, to the intent of their having the effect of punishment.

With relation to the civil code,—taking the mass of its arrangements for an intermediate end, the matter of the penal code is but a means. By the arrangements contained in the civil code, so many directive rules are furnished; what the penal code does, is but to furnish sanctions, by which provision is made for the observance of those directive rules. In truth, it goes but part of the way towards furnishing that indispensable appendage; for, of sanctions, there are two sorts, viz. the punitive and the remunerative; and the punitive is the only one of the two, which is furnished by the penal code as such.

Hence it is that, in the field of law, command occupies a much greater extent than is occupied by invitation. Between the idea of command and the idea of eventual punishment, the connexion is inseparable. Thus it is, that the character and form of penality are given to the principal mass of those directive rules by which the distribution of benefits, as well as that of burthens, is effected. The matter of the civil code is in its form little else but a sort of exposition of the terms employed in the commands delivered by the penal code.

Thus to give effect to the distribution made of property, against the several acts by which it is invaded,—usurpation, for example, or theft, or endamagement,—the law must afford the means of knowing what is each man's property, and, for this purpose, employ some such word as *titles*, to denote the several efficient causes of it. But so long everywhere is the list of the different sorts of titles, and so unavoidably complicated and voluminous the descriptions of the modes in which they may be acquired and lost, that to insert all this matter of detail in the body of the penal code would give an altogether disproportionate bulk to the matter of the different sections, which necessarily belong to it; and, in particular, the several sections in and by which the several acts, which have been distinguished and erected into offences, have been described. Hence, from the several passages in which, in a penal code, any such word as title occurs, reference will be made to the division headed with some such word as *titles*, in the civil code. So again, of the offences enumerated and defined in the penal code, non-performance of services due by contract, or, more shortly, non-performance of contract, must necessarily be one. But as of services the variety is infinite, so of services to the rendering of which a man may seek to oblige himself by contract the variety is great: correspondently great, on the other hand, is the variety of cases in which, notwithstanding the entrance made into this or that contract, it is not fit that the sanction of the law should be employed in enforcing the performance of it.

Of the matter of the penal code, the designation made is not complete until a designation has been made of all the sorts of acts which, by it, are dealt with in the character of offences. Of the matter of the civil code, the efficiency would be throughout as nothing, were not the several acts by which the distributions made by it are violated, dealt with on the footing of offences. Yet, there is no such correspondency between the one sort of matter and the other as to render it convenient that both together should be amalgamated into one and the same code. For, though there are some offences, for the full and adequate description of which abundance of the sort of expository matter above spoken of is necessary—as, for instance, the offences by the creation and punishment of which protection is afforded to property—yet property is but one out of several endowments to which protection is afforded; and some there are, to the protection of which by appropriate arrangements of penal law, no such voluminous masses of expository matter are requisite. Every man, for example, has, on certain conditions, and in certain modes, a right to protection at the hands of law against such acts as are injurious to his person. But, for the designation of his title to his person, or of

his title to such protection for it, no such details are necessary as in the case of property.

And the like may be said with regard to reputation.

SECTION III.

Subsistence.

Original and all-comprehensive, derivative and incidental, means of subsistence. By these words may be designated the two branches of a division which it is necessary in the first place to bring to view.

The original fund of each man's subsistence is each man's labour. The production of it is the work of nature without law, and antecedently to law. What it looks for at the hand of law is security: security against calamity, security against hostility from foreigners, from fellow-subjects, and from rulers.

Incidental and derivative means of subsistence. The need of these arises out of the deficiences that are liable to have place in the produce of each man's labour, considered as a fund for each man's subsistence.

Certain and casual. By the two distinctions thus designated may be comprehended, in the first place, all the varieties of which the cause of this deficiency are susceptible.

Certain is the nature of those produced by time of life: by the time antecedent to the capacity for labour, and by the time subsequent to it: by immaturity and by caducity.

The time of immaturity endures for years: the time of caducity may endure for years, or may terminate in the same moment in which it commenced.

Want of capacity for labour, want of employment for labour. Under one or other of these heads may be comprehended all the *casual* causes of deficiency in regard to subsistence.

Casual want of capacity for labour is indisposition—relative indisposition. Indisposition may be of body or of mind: the degree of indisposition in question is designated by the effect.

If against any of the causes of deficiency in regard to subsistence the government has failed to provide an efficient remedy, the consequence is death; security against calamity has so far failed to have been afforded.

But against deficiency in regard to subsistence, no remedy can ever be provided but at the expense of security for abundance. The fund of abundance is composed of the stock remaining of the produce of labour, deduction made of the several amounts, substracted by consumption, useful and useless, immediate and gradual, natural and human, in all their several shapes.

In his endeavour to provide a remedy against deficiency in regard to subsistence, the legislator finds himself all along under the pressure of this dilemma—forbear to provide supply, death ensues, and it has you for its author; provide supply, you establish a bounty upon idleness, and you thus give increase to the deficiency which it is your endeavour to exclude.

Under the pressure of this dilemma, how to act is a problem, the solution of which will, in a great degree, be dependent upon local circumstances: nor can anything like a complete solution be so much as attempted without continual reference to them. One leading observation applies to all places and all times. So long as any particle of the matter of abundance remains in any one hand, it will rest with those, to whom it appears that they are able to assign a sufficient reason, to show why the requisite supply to any deficiency in the means of subsistence should be refused.

SECTION IV.

Abundance.

Of the instruments of abundance, the fund is composed of the surplus of the means of subsistence, deduction made of the quantity destroyed by consumption in all its shapes.

Increase of production—decrease of consumption. Under one or other of these two heads may be comprehended all the possible causes of increase to the abundance fund.

Natural and factitious. Under one or other of these two heads may be comprehended all the possible modes of increase to production.

By natural, understand all those that have place without intervention on the part of the government in this particular view. Under this same head natural, is therefore comprehended whatsoever assistance is afforded to production, by the security afforded to produce.

By factitious modes of increase to production, understand all such as are employed by government in that special view.

Here comes in with propriety one general and all-comprehensive rule. In so far as the natural means of increase to the abundance fund suffice for the production of the effect, forbear to employ any factitious means for giving increase or acceleration to it.

Neither for this purpose nor for any other can the power of government be employed, but coercion must be applied immediately, in so far as the inducements employed are of the penal kind; unimmediately, in so far as the inducements employed are of the remunerative kind: but it is only by coercion that any means of remuneration can be collected.

In favour, and for the benefit of, A, you cannot seek to give increase to production in the hands of A, except in so far as coercion is applied either to A himself, or to B, C, and D, and so forth.

But why seek to benefit A by coercion applied to A? His regard for himself is greater than yours can be;—his knowledge of what is most beneficial to himself is greater than yours can be;—his experience of what has been most beneficial and most hurtful to himself is greater than yours can be.

Why seek to benefit A by coercion applied to B, C, and D, and so forth? Coercion is evil—positive evil—suffering: absence of in-

crease is but negative evil. No suffering is the result of it. A is but one; B, C, D, and the rest of them are many: by the number of them all, after allowance made for the lessening of loss by the distribution of it, is the quantity of the suffering, produced by the coercion, multiplied.

Increase cannot thus be sought to be given to production otherwise than at the expense of equality; by violations made of the rules of equality, for the importance of which to the greatest happiness of the greatest number, see further on.

For *security*, yes, without decrease, and with increase to the greatest happiness of the greatest number, the rules of equality may be infringed: for increase to abundance, without decrease to the greatest happiness of the greatest number, they cannot be infringed.

The negative means of increase to the abundance fund is by decrease of consumption. In so far as it is by voluntary decrease of consumption that decrease is made in the amount of the abundance fund, by the respective proprietors, pleasure and security, in all their various shapes are the effects of it, and are in proportion to it. In the case of by far the greatest portion, in quantity and value, of the produce of labour, subsistence, pleasure, and security, in all their several shapes, have place only in so far as consumption has place. In each individual instance, from which of two causes, pleasure, or security, or both, are derived by him in greatest quantity, viz. from consumption or from avoidance of consumption-- in a word, from preservation, is better known to the proprietor himself, than it can be to any body, and not at all known to you.

The great cause by which decrease is produced in the abundance fund, always without pleasure, and, in too great degree, without proportionable security to the possessors, is, that which consists of the draughts made upon it by government.

The abundance fund being composed of savings made out of the subsistence fund, includes in it the subsistence fund: the materials or instruments of abundance are the materials or matter of subsistence.

Diminution of consumption being one of the two means of increase to the abundance fund, hence, upon occasion, where, under the notion of providing security in all its branches for the several instruments of felicity, draughts are made by government upon the abundance fund by taxes, some indication may be afforded respecting the subjects on which, with least detriment, the taxes may be imposed.

With or without design, in so far as a tax is imposed upon any article, the consumption, the use, and thereby the production, of it, is discouraged. To that article discouragement is applied, and, at the same time, to all other articles, in so far as they are rivals to it, encouragement.

Hence, other effects laid out of the question, for increase of the abundance fund, with a view to subsistence, there is a use in imposing taxes rather on objects, to the use of which prompt consumption is necessary, than on objects, to the use of which slow and gradual consumption is sufficient: on objects applicable to the purpose of subsistence of themselves, and without exchange, rather than on objects not applicable to that purpose, otherwise than by exchange, especially if not otherwise than by exchange with foreign or distant countries.

Section V.

Equality.

Fourth on the list of the benefits which the civil branch of the law is occupied in distributing, is equality.

By equality is here meant, not the utmost conceivable equality, but only practicable equality. The utmost conceivable equality has place only in the field of physics; it applies only to weight, measure, time, and thence to motion.

The utmost conceivable equality, say absolute equality, admits not of degrees,—practicable equality does admit of degrees.

Equality is not itself, as security, subsistence, and abundance are, an immediate instrument of felicity. It operates only through the medium of those three, especially through abundance and security. Of all three taken together, the use, fruit, and object is felicity—the maximum of felicity; of this maximum the magnitude depends upon the degree of equality that has place in the proportions in which those three are distributed.

Apply it first to subsistence,—means or instruments of subsistence,—subsistence taken in the strict sense. There is not in this case a place for degrees in the scale of equality; for, by the supposition, no inequality has place in this case. As contradistinguished from the instruments of abundance, by the means of subsistence, is meant that least quantity of those instruments, which is such, that with any lesser quantity existence could not have place: no subsistence, no existence.

It is when applied to abundance—to the elements or instruments of abundance, that the nature, and, with the nature, the importance, of political economy is most plainly discernible.

In the aggregate of the elements of abundance is included, as above, the aggregate of the means of subsistence. If the aggregate of felicity were as the aggregate of the elements of subsistence, no addition could be made, by any degree of equality, to the aggregate of felicity. But so far is this from being the case, that it is a question scarcely susceptible of solution, whether, where the aggregate of the elements of abundance is represented by the greatest number possible, the aggregate of felicity is so great as, or greater than, two. Take, on the one hand, the day-labourer, who

throughout life has had complete means of subsistence, but at no time any portion of the elements of abundance: take, on the other part, the monarch, who throughout life has had the elements of abundance, together with all the other instruments of felicity, in the greatest quantity possible. Ages equal, scarcely can any one assure himself by full persuasion, that the quantity of felicity enjoyed by the monarch has been twice the amount of that enjoyed by the labourer; for the quantity of felicity is not as the quantity of the elements of felicity simply, but as the quantity of the elements of felicity, and the capacity of containing the felicity, taken together. In a basin of water, introduce anywhere a secret waste-pipe: inject through another pipe any quantity of water how great soever, the vessel, it shall happen, will be never the fuller; for as fast as it flows in at one part, it flows out at another. Just so it is with the elements or instruments of felicity, when a stream of them, of boundless magnitude, is injected into the human breast. Of pain, in all its shapes, a monarch is no less susceptible than the labourer: and in its most common shapes the quantity of pain may be, and frequently is, so great as to outweigh the greatest quantity of pleasure in all its shapes, of which human nature is susceptible. Even suppose pain, in all its severe shapes, absent during the whole time: the quantity experienced the whole time, suppose it a minimum: this being the case in both situations, still the question will remain insoluble as before. For in both cases the quantity of felicity actually enjoyed depends on the degree of sensibility to enjoyment, in each instance: and while in the labourer the sensibility is a maximum, the degree of sensibility in the monarch may be a minimum. Even supposing this sensibility to be at the same degree, in both instances at a given time of life, it is, in the case of the monarch, exposed to a cause of diminution, which has no place in the case of the labourer; for by high dozes of the exciting matter applied to the organ, its sensibility is in a manner worn out. And in fact, number for number, the certain probative symptoms or circumstantial evidences of infelicity, as exhibited on the countenance, are at least as frequent in the case of the monarch as in the case of the labourer.

Apply the investigation to any of the situations intermediate between that of the labourer and that of the monarch, the result will be the same.

The more closely the subject is looked into, the more complete will the persuasion be.

Of the enjoyments or instruments of positive felicity, the principal and most unquestionable will be found to be, as constantly and in as high a degree, attached to the situation of the labourer, as above delineated—the labourer, to whom none of the means of subsistence have been wanting, though none of the other elements of abundance have been present—as to that of the monarch.

The principal enjoyments of which human nature is susceptible, constancy of repetition being considered as well as magnitude, are—those produced by the operations by which the individual is preserved; those produced by the operations by which the species is preserved; that cessation from labour which is termed repose; and that pleasure of sympathy which is produced by the observation of others partaking in the same enjoyments. These four, with the exception of repose, are so many positive enjoyments upon the face of them.

Cessation from labour presents, it is true, upon the face of it no more than a negative idea; but when the condition of him by whom repose after corporeal labour is experienced, is considered, the enjoyment will be seen to be a positive quantity; for, in this case, not merely a cessation from discomfort, but a pleasurable feeling of a peculiar kind, is experienced, such as, without the antecedent labour, never can be experienced. In the case of the labourer, it may indeed be said, that before the time of repose, with its enjoyment, arrives, the labour is pushed to a degree of intensity of which pain (in those degrees, at least, in which it is denoted by the word discomfort) has been produced. But the greater the degree of the pain of suffrance, the greater the degree of the pleasure of expectation—the expectation of the pleasure of repose—with which it has been accompanied. And this pleasure of expectation has had for its accompaniment, the pleasures of expectation respectively appertaining to the other pleasures of enjoyment above-mentioned; sensibility with regard to each being increased by that very labour, to the intensity of which that of the pleasure of repose is proportioned.

Pursue the investigation throughout the several other enjoyments of which human nature is susceptible, the ultimate result will not be materially different.

Except in so far as security cannot be afforded to one man but by defalcation made from the security afforded to another, where is the man to whom appropriate security ought not to be afforded for his person, for his reputation, or for his condition in life? Where is the man to whom, for any one of those three possessions, greater or better security ought to be afforded than to any other?

Remains property, as the only one of the four possessions in relation to which the application of the benefit of equality requires any considerate discrimination or reserve.

When, and in proportion as, by any cause, defalcation to any amount is made from the mass of a man's property, whether in possession or in contingency, a correspondent defalcation, there is always sufficient reason for believing, is thereby made from the sum of his happiness.

The defalcation thus made from happiness may have place without his being apprized of the defalcation made from his property.

Such is the case, for example, where a man having in his possession a mass of property, the exact amount of which is not known to him, a defalcation, not known or suspected by him, is made from it, whether by design or accident.

So again, in case of contingency, a gift or legacy being, without his knowledge, intended for him, a third person intervenes, and, without his knowledge or suspicion, prevents the intention from being executed.

In these cases, happiness is diminished, viz. by diminution of pleasure; but in these cases no positive pain is produced.

If with his knowledge, and without his free consent, a defalcation is made from the mass of his property, in this case, over and above the sort of negative defalcation made as above, defalcation of a positive aspect is made, viz. by means of, and in proportion to, a particular pain, which, in some quantity or other, he cannot fail to experience. A pain of privation, or a pain of loss, are the names by which this species of pain has been distinguished.

If from the operation of a cause, the same with, or similar to, that one from the operation of which a loss, as above, has been sustained by a man, he is made to entertain the apprehension of ulterior loss, produced by ulterior operations of the same cause, another pain of a different description takes place, in addition to the above. This pain has been denominated a pain of apprehension, grounded on loss.

If but for the loss thus incurred, the man would have continued or engaged in some profit-seeking and profitable course of labour; or if he is, by the apprehension of the like eventual loss, prevented from continuing or engaging in such course,—a loss to a further amount is thus produced, and by means of it, it will generally happen, an additional and correspondent pain. The loss has been denominated loss by depression of industry; the pain, pain from repression of industry.

Of these four modes of defalcation from happiness by defalcation from property, the two first-mentioned apply exclusively to the individual thus damnified, and the circle of his connexions in the way of interest and sympathy. From the two last, by the observation of his suffering, may be propagated, as it were, by contagion, a cluster of similar evils in the breasts of other persons, the number of whom will be determined by the number of those by whom intimation having been received of his loss, apprehension comes to be entertained of loss to themselves, or their connexions, from the operation of the same cause, or similar ones.

This pain, to the extent of which, that is to say to the number of persons participating in it, no exact limits can be assigned, has been denominated the pain of insecurity by contagion.

When a mass of property, not as yet in the man's possession, having been an object of expectation to him, fails at the expected time to come into his possession, disappointment on his part takes place,—a correspondent pain is experienced by him, a pain of disappointment.

Correspondent to the pain of privation in case of defalcation, is the pain of disappointment in case of expectancy.

In the case of the first of these evils, if by the same cause by which it has been produced to one party, good to an amount not inferior, has been produced to another party, no sufficient reason will have place for abstaining from the production of it.

Where no expectation has had place, no disappointment can have place. In the exclusion of the above evils may be seen the only reasons why, for property in any shape, against the acts of persons of any description, security should, in any shape, in any place, at any time, be afforded; why, for theft in any case, for fraudulent attainment by any means, for robbery, for extortion, for peculation, in a word, for depredation in any shape, punishment should be appointed.

In the instance of each individual, a particular point of time there is at which, without defalcation made from security in his instance, or in the instance of any other individual, his property may be subjected to a distribution or other disposition, whereby, according to the amount of it, advance towards absolute equality may be made.

This time, is the time of a man's death. In his instance no such evil is produced, for he is no more. In the instance of no other individual, if sufficient and effective care has been taken to exclude expectation, will evil be produced; for the only evil incident to the case is disappointment, and, by the exclusion of expectation, disappointment has been excluded.

Whatsoever be the amount of a man's property, if, within a certain distance from him in the line of natural relationship, relations of his, knowing themselves to be such, and known by him to be such, are in existence, an expectation of possessing, at the time of his death, the whole, or a portion more or less considerable, of that property, (with the expectation of such part, if any, as it is known will terminate at his death,) will, in proportion to their several degrees of propinquity, and correspondent amity, be entertained,—that is, in the instance of such of them as, in respect of age and other circumstances, are capable of entertaining expectations of this nature.

In the instance of some of these persons, this habit of expectation has had, for its cause and support, a correspondent habit of co-enjoyment.

In this case are constantly a man's wife and children; a woman's husband and children; incidentally any other such near relations, especially blood-relations, whose circumstances, in conjunction with his own, have happened to

produce, on their part, such habit of co-enjoyment.

On this occasion by the distribution which, according to the natural course of things takes place (abstraction made of arrangements established by positive law, for the express purpose of controlling it) equality, and that without defalcation from security, is promoted.

So various are the circumstances in which, on the occasion of any such decease, a family is capable of being left, that, in the way of detail, it is impossible to pronounce, by any general rule, what course or plan of distribution is most natural: what course or plan is, in the highest degree, conducive to the greatest happiness of the greatest number.

In general terms, thus much however may be said, that among those by which equal regard is paid to the habit of co-enjoyment, other grounds of expectation and demand, being on the same footing, that course will be most beneficial which, in its nature, and in the conception entertained of it, and the description given of it, is the most simple.

Say, for example, children or no children, on the death of the husband, the whole of his property to the widow: on the death of the wife, the whole of her property to the widower.

On the children, the state of dependence in which they are thus left, imposes no new hardship: this dependence is but a continuation of existing dependence.

As between child and child, on the decease of the widower or the widow, equality; this, for a general rule is the most obvious, and has the advantage of simplicity.

Abstraction made, of any difference of demand that may be regarded as produced by sex—in favour of an elder child, in support of a claim on his part to a more than equal share, may be adduced the longer continuance of his habit of co-enjoyment.

But, in favour of the younger, in support of a claim on his part to a more than equal share, may be adduced the more urgent need resulting from, and proportioned to, the deficiency in his capacity of providing the means of subsistence from his own labour, in comparison with a brother or sister of maturer age. Of this latter reason the force presents itself as being superior to that of the former.

For the solution of these, and a host of other difficulties, altogether incapable of being aptly provided for, by general rules, provision may be made, and very generally is made, by a power of disposition given to the parents or one of them: natural affection, guided by ordinary prudence, being in this case trusted to, for the accomplishment of the universal object—the greatest happiness of the greatest number interested.

But neither are natural affection nor prudence, in this case, in every instance, what it were to be wished they were. This considered, a course that may naturally enough present itself to the legislator is, to divide the thus vacated mass of property into two parts: one, the division of which shall be determined by the single consideration of equality; the other, in relation to which the case of providing for the differences liable to be made in the proper quantum of allowance, by the difference that may have place in respect of the quantity needed, and the correspondent urgency of the demand, is left to be provided for by natural affection, guided by ordinary prudence, as above.

In modern Europe, by the operation of causes produced by a state of society such as has no longer any place anywhere, an arrangement, altogether different from the above, and as adverse as possible to equality of distribution, and the beneficial effects depending on it, has, to a vast extent, for many ages had place, and continues to have place: to females nothing: to males, if but one, the whole: if more than one, to the eldest the whole: to the other or others, in whatever number, nothing. For this arrangement, in times of high antiquity, there existed a cause which was not wholly destitute of reason. From external adversaries, or from this or that portion of its own members, and in particular from the great majority of them, placed in relation to the ruling few, in the condition of slaves, the state of the whole community was a state of continual, all-pervading, and imminent danger. The mode of armament was at the same time, compared with the immature state of the arts on the operations of which it depended, a highly expensive one. For defence, in addition to the ordinary habiliments, were others composed of iron: for offence, lances, spears, or bows and arrows. Lances were in an eminent degree, exposed to fracture: by a spear no chance of producing effect could be afforded, but by its being parted with, and conveyed to the adversary: and so in the case of the arrow. To these, as well for offence as defence, was added a horse: nor for the defence of the horse, was a sort of appropriate armour always refused; bridles and saddles for him, were at any rate necessary: and, employed or not employed, food for him, with a certain degree of attendance, was at all times necessary. To destruction or cessation, the services of the animal were exposed at all times: a succession was therefore necessary to be kept up.

By the conjunct operation of all these causes taken together, to the maintenance of each individual, whose powers were thus applicable to the defence of the community, a mass of property, continually kept on foot, was indispensably necessary. In the possession of any such individual, suppose a mass of property sufficient, but not more than sufficient, for this purpose; if, upon his decease, this mass of property were to be subjected to division, the national force would thus be bereft of one of its constituent parts: and, in a state of so-

ciety in which the cultivation of the means of subsistence had made so small a progress, so small was the number of the individuals thus equipped, that no individual could be subtracted from the number without sensible diminution of national security.

From all labour employed in the production of the means of subsistence, and the matter of abundance, all persons thus engaged in the defence of the community, stood exempted; partly by necessity, in respect of the need of the application of it to their military function, partly by the power they had of exacting from others, labour for those and other purposes, for their own use.

In regard to exposure to the necessity of labour, from this state of things has been produced, in the minds of a certain portion of the community, a division of the members of that same community into two classes: one composed of those in whose instance the need of employing labour in the acquisition of subsistence and abundance, is no hardship: another composed of those in whose instance the need is a hardship.

The exigencies and habits of acting, produced by this state of things, have long been at an end everywhere; but habits of thinking, produced by it, are scarcely at an end anywhere.

To descend from a higher to a lower place in the scale of opulence, is a change which can neither be endured nor apprehended without uneasiness. On the decease of any possessor of property living without labour, laying out of consideration the widow or the widower, no division can have place among the children, but that, at any rate, (if it be an equal one,) this inconvenience must be experienced—experienced by all of them, in a degree proportioned to their number,—if, by the late proprietor, a house of a certain extent and appearance, with servants in a certain number, and a table furnished at a certain expense, were kept up, in the comforts of all which, during the life of the father, the children had, all of them, in a greater or less degree, and naturally in an equal degree, participated,—after the decease of the parent, no such equal enjoyment (except on condition of a degree of harmony not to be expected from equals so situated, and not under the control of any superior, nor in that case without universal renunciation of the comforts of matrimony) could be maintained.

But, in a situation of this sort, such is the course taken by self-regard, looking forward to the time in which, in his own person, he will have ceased to exist, imagination presents to a man, as a sort of substitute to his own person. that of another, who, in nature, denomination, and in amount of property, shall come as near to himself as one person can come to another. A person whose body once formed a part of his own, and in the rendering of whose mind a continuation of his own, as much care and labour has been employed as it was agreeable to him to employ.

The usefulness of the benefit of equality stands, then, upon these positions:—

1. The quantity of *happiness* possessed by a man, is not as the quantity of *property* possessed by the same man.

2. The greater the quantity of the matter of property a man is already in possession of, the less is the quantity of happiness he receives by the addition of another quantity of the matter of property, to a given amount.

3. The addition made by property to happiness goes on increasing in such a ratio, that, in the case of two individuals—he who has *least*, having, at all times, a quantity of the matter of property sufficient for a subsistence, while he who has *most*, possesses it in a quantity as great as any individual ever had, or ever can have; it is a question scarce capable of solution, whether the one who has the greatest quantity of the matter of property, has twice the quantity of happiness which he has whose quantity of the means of happiness, in that shape, is the least.

If this ratio, of two to one, be regarded as too small a ratio, substitute to it the ratio of 3 to 1, the ratio of 4 to 1, and so on, till you are satisfied you have fixed upon the proper ratio: still, the truth of the practical conclusion will not be affected.

This conclusion is, that, so far as is consistent with security, the nearer to equality the distribution is, which the law makes of the matter of property among the members of the community, the greater is the happiness of the greatest number: and, accordingly, this is the proposition which, so far as can be done without preponderant prejudice to security, ought, at all times, and in all places, to be established and maintained.

As to absolute equality, in relation to property, such equality is neither possible nor desirable.

It is not possible, because, supposing it to have place at the commencement of any one day, the operations of that one day will have sufficed to have destroyed it before the commencement of the next.

It is not desirable, because never having had existence in any country, at any time, it could not have place in any country in future, without having been endeavoured to be established in that same country: in which case, not only the endeavour, but the very design alone, accompanied with any assurance of its being about to be followed by the correspondent endeavour, perseveringly exercised, would suffice to destroy the whole of the value, and the greatest part of the substance, of the matter thus undertaken to be divided.

Section VI.

Rights and Obligations.

Correspondent to rights, are obligations.

Without the idea expressed by the word obligation, no clear or correct idea can be annexed to the word right.

Rights are either simple or complex: simple rights, are the elements out of which complex rights are composed. Those which first come to be considered, are simple rights.

An original or primary right, is that which is constituted by the absence of the correspondent obligation. This is the sort of right which has place antecedently to the formation of government. It belongs equally to every agent, and has place with relation to every subject. No man, as yet, being under any obligation to abstain from making any use of anything; every man has, as yet, a right to make every use of everything.

Next come those rights, the existence of which is constituted by the existence of correspondent obligations.

First comes that right which is constituted by an obligation imposed upon other men, inhibiting them from exercising, with relation to the subject in question, the sort of right above designated by the appellation of an original or primary right. Call this a right by obligation, to wit, restrictive obligation,—imposed by the addition of this secondary right, the primary right acquires the character and name of an exclusive right.

If the birth of the exclusive right awaits a manifestation of the will of the person in whose favour it is created, it receives the appellation of a right of excluding, or say of exclusion.

In this case, the word *power*, is in use to be employed: and we say, accordingly, right of exclusion, or power of exclusion.

In the case of the right by exclusion, or the right of excluding, the subject to which the right and the exclusion apply, may be an individual or a species: an individual, for instance, the paper, and the collection of marks called letters which have been superinduced upon it: a species, for instance, any paper of the texture or appearance of this individual paper, or any marks presenting to view in the same order the same words, *i. e.* words of the same import as those which upon this paper are superinduced.

Of this species of exclusive right, to wit, the exclusive right which applies to sorts of subjects, the origin is of a date long posterior to that of the right which applies to individuals. When, as in the case of copyright, the duration proper to be given to it came in question, its nature and the mode of its formation were so imperfectly understood,—so far from being clear and correct, were the ideas suggested by the words employed in giving expression to it, that the mass of argument produced by the contest, exhibits a web of confusion no where unravelled. Of the original sort of right, it was said that it presented something tangible: of the more recently created sort of right, it was said that it presented nothing tangible: and in this supposed absence of tangible matter was found a sufficient reason for disallowing the right. But it has just been seen, that whereas in the case of the original right, the quantity of tangible matter belonging to the case is but individual, and therefore, finite; in the case of the more recently created right, that quantity is a species and therefore infinite.

On the occasion of these rights, will come to be considered the subjects to which they are applicable, and also their efficient causes: to wit, the several states of things or occurrences by which they are wont to be respectively brought into existence.

SECTION VII.

Benefits and Burthens.

Of the distribution made of benefits, the proper object is, that the sum of them be as great as possible.

The distribution made of benefits, has two classes of effects: the first belong to the sensitive faculties only: the other, through the sensitive to the active.

Those which belong to the sensitive faculties only, are the effects universally produced throughout the whole of the field to which this branch of law applies itself: those which operate on the active faculties, are incidental only: they consist of those produced by the subject matter of the distribution, operating in the character of the matter of reward.

In the way of reward, a benefit thus distributed, is capable of being made productive of mischievous effects of two different descriptions, according to the two modes of existence, of which, in respect of duration, it is susceptible: viz. transitory and permanent: the degree of permanency being, in some cases in its nature, not incapable of extending to perpetuity.

In the case where the benefit thus made to operate, is of a transitory nature; in so far as application is made of it to the production of mischievous effects, it may be termed the matter of subornation.

Instances are, insurances against misfortune in every shape: against sufferance by fire, water, ordinary mortality.

The law of succession has this mischievous tendency: how effectually, soever, the tendency is, in general, counteracted and nullified, by natural sympathy, by the tutelary force of public opinion.

Wagering is capable of receiving a subornative tendency: when it does so, it operates in that way by a double force: by the force of punishment added to that of reward.

Where the shape in which the benefit exists, is the eventually perpetual shape, and the operation of it extends itself to the active faculty, the act by which it is established, is what is styled foundation: and in conformity to a grammatical ambiguity so extensively

prevalent, the permanent result of that same transitory act is styled a foundation.

Out of this law, supported by no other than a remuneratory sanction thus limited, may be, and is made to grow in each instance, an indefinitely extensive mass of law, having, for its support, with or without remuneratory, a penal or punitory sanction.

An example is seen in all foundations having the advancement of art and science in adults or non-adults for their object or pretence. Take, for example, a college in an English university. Out of a mass of income produced by an estate in land, or an annuity payable by government, certain annuities for life or years are distributed among certain of the members, by the name of fellows and scholars: the greater masses of the annuity being styled fellowships, the lesser, scholarships. It is only on certain conditions that the possession of those several annuities can be made to commence or to continue. To give, to such or such an act or mode of conduct, the effect of terminating the continuance of the annuity, is to prohibit such act by a penal law, having, for its support, the punishment consisting in the forfeiture of the fellowship or scholarship, as the case may be. In the value of the benefit thus denominated, may be seen the limit on the side of increase of the mass of punishment which the laws of this foundation have for their support: and by the force of this punishment, punishment to any inferior amount may, in this case, be substituted.

According to certain opinions of the whole number of the individuals, past, present, and to come, belonging to the human species, a majority, or some other very large proportion, are, on the termination of the present life, consigned to a state of torment, exceeding in an infinite ratio, as well in intensity as in duration, the most afflictive that, in this life, has ever been experienced, or can be conceived. According to these same opinions, there exists a certain class of persons so gifted, that, by certain acts performable by any one of them, in favour of any individual chosen by him for that purpose, diminution may be effected either to the probability of his being subjected to such torment, or, at any rate, to the duration of it. Let an exemption to this effect be supposed obtainable, the greatest mass of the matter of wealth that ever was possessed, or ever could be possessed, by any man, would, in the character of a reward for the service by which this exemption, or rather, this chance of exemption, was afforded, be as far from being equal in value to the service thus obtained, as the value of the smallest denomination of coin would be, to the value of the richest treasure ever accumulated within the compass of one and the same receptacle.

Let these opinions, be the political community in question what it may—let a set of opinions of this nature be universally, nay, let them be but generally prevalent, it is evident that, sooner or later, human nature being constituted as it is, amongst the effects of them would be, the lodging in the hands of the persons thus gifted, as large a portion of the good things of this world—of those benefits which it is in the nature of distributive law, or of constitutional law to confer, as it is in the nature of things, that such hands should, in the whole assemblage of them, be capable of containing.

According to the nature of the event which is the subject of it, lay a wager, you may unite in that one arrangement the power of punishment and the power of reward.

Lay a wager of £1000, that a certain individual outlives a certain day, you offer to the person with whom you lay the wager, a reward of £1000 for putting him to death on or before that day: you subject him at the same time to a penalty of £1000, in case of his not putting the man to death on or before that day.

Thus it is, that as it were, in the three different languages—in the languages of these three different branches of law, one and the same arrangement may stand expressed: being expressed in the first instance, in any *one* of these three languages, it may be translated into one or both of the two others.

Of the effect of any arrangement, in the first instance, as belonging to this or that one of these three branches, would you have a clear, correct, and complete view? Grudge not the trouble of this legislator's exercise.

Render the cessation of a permanent reward eventual, in the event of the performance of this or that act, by the individual rewarded, you graft on the reward a punishment. Render the cessation of a permanent punishment eventual, in the event of the performance of this or that act by the individual punished, you graft on the punishment a reward.

By donation or bequest, give a man a hundred pounds a-year for his life, remainder to his son for his life, you offer to the son a reward of a hundred a-year life rent, in the event of his putting to death his father.

To a certain extent, in the instance of the law of most countries, counter causes, natural or factitious, or both, have sufficed, for the most part, to divest these distributive arrangements of their deleterious quality: in the case of the wager, the penal law against murder: in the case of the donation or bequest, the same penal law preceded and strengthened by natural affection and the habits that ground it.

Thus, on taking, on the one hand, a view of the deleterious influence of the temptation presented by arrangements which, in the first instance, may have presented themselves in no other character than that of arrangements of civil or distributive law, operating on no other than the passive faculty, care should be taken, on the other hand, not to suffer to pass unheeded, the moral forces by which, in the

character of tutelary sanctions, the force of the temptation may be, and, in the ordinary state of things, is, effectually resisted.

Unfortunately for mankind, those salutary restraints which, in ordinary cases, operate with sufficient effect on a small scale, operate with no effect at all, or at the best with comparatively very small effect, on a large scale: acting with effect in the prevention of suffering producible to a small amount, by men in the situation of individuals, they act with little or no effect in the prevention of suffering producible by men in the situation of rulers.

In the course of some reign, which it would not be material or perhaps altogether easy to particularize, the law servants of an English king fabricated an imaginary law, producing, by the help of their power, the effect of a real one, giving to their master—not forgetting themselves—the proceeds of all such vessels as should be, or rather, as had been captured, from the subjects of any foreign state antecedently to any declaration of war by him against such foreign state. Of this *ex post facto* law, what was the effect? Offering to him a reward, payable in the event of his giving in this way commencement to a war, necessary or unnecessary, justifiable or not justifiable: if not necessary not justifiable—and if not justifiable, giving commencement to a course of murder exceeding, in mischief and in guilt, any act punished by the hand of the ordinary judge in the instance of a private offender, under the name of murder, by the same amount by which the number of lives destroyed in the course, and by means, of the war, exceeds number one. Supposing the war so commenced, not until at the end of a competent time *after* such declaration of war, would the profits of these murders, in certain fixed proportions, have been divisible among such of the persons as were employed in the capture of the respective vessels. In this particular case, in which, at the time of the commencement of the plunderage, no declaration of war has been made, this part of the profits of it was, by the above-mentioned spurious substitute to an *ex post facto* law, given to the most gracious and religious king, whose instruments the fabricators of it were. Of a declaration of war, the purpose intended or professed is, by warning of sufficient length, to enable persons who, on the faith of a state of peace, have trusted themselves or their goods, within the reach of the state thus constituting itself in a state of war, to remove themselves in time for escape. By forbearing to issue this warning, all such persons as, if it had been given, would have escaped the calamity, are comprehended in it.

By subjects not commissioned for that purpose by their sovereign, capture thus made, would have given to the act by which it was made, the denomination of an act of piracy, and the agents, the name of pirates.

Of the distribution made of burthens, the proper object is that the sum of them be as small as possible.

Inseparable and separable.—On this occasion this is the first distinction that requires to be made with regard to burthens.

By inseparable, understand that class of burthens, the imposition of which, is in the instance of each individual benefit, inseparable from the creation and collation of that same benefit, with reference to the same individual possessor.

Thus, the exclusive possession of any subject-matter of property cannot be conferred on any one man, except in so far as all others are debarred from intermeddling with it: but, as in the case of any object of general desire, the being allowed to make use of it, is a benefit, so the being debarred from making use of it, is a burthen.

By separable burthens, understand those which, in their nature, are not incapable of being imposed respectively upon any individual, without the conferring of any correspondent and inseparably connected benefit on any determinate individual, or set of individuals, or the whole community taken in the aggregate.

In the case of this class of burthens comes, in the first place, the following rule:—no burthen without a correspondent and preponderating benefit.

In so far as this rule is observed, no burthen can, in any case, be imposed, but that there are at least two parties whose interests are affected by it: the party favoured and the party burthened. To the party favoured the first place is here given: for, by this arrangement, two mementos are given. One is, not to impose a burthen in any instance until some determinate party, on whom a correspondent favour will be conferred by the imposition of it, has been found.

The other memento is to consider and ascertain, who or what, is or are, the parties on each side: whether, for example, it is for the benefit of the many that the burthen is imposed upon the many, upon the few, or upon the one; or, for the benefit of the one, or of the few, that the burthen is imposed on the many.

But, on every occasion, without detriment to the greatest happiness of the greatest number, a burthen may, in any shape, be imposed upon any individual or individuals in any number, for the benefit of an individual or individuals in any number, so that this condition be fulfilled: viz. that the sum of the benefits conferred be greater in value than the sum of the burthens imposed. On this occasion, when, for the sake of a benefit intended to be conferred on one party, a burthen is imposed on another party, the burthen is apt to be either altogether overlooked or set down at a value less than its real one: for the benefit being, by the supposition, the object that first presented itself to the mind, and by its nature the more agreeable object, such is the natural consequence.

Thus much as to the party in favour of whom the burthen is in contemplation to be imposed.

Next comes the consideration of the serviceable object, by the creation and collation of which the benefit is conferred.

In so far as, for the purpose of conferring a benefit on one party, a burthen is imposed on another, an obligation and a right are, by the same operation, created, having for their common subject-matter a *service:* to the one party a right to receive the service—to the other the obligation of rendering it.

Services by which the possession of money is conferred, and services at large,—such is the division which, how disproportionate soever the terms of it may appear, requires to be made.

Instead of services by which the possession of money is conferred, money (precision being sacrificed to brevity) is a term which, on this occasion, must henceforward be employed.

To money, in preference to services at large, is the first place, on this occasion, assigned: of money, the equivalent of almost all those other services, the comparative importance being so great, and, at the same time, the conception at the utmost point of simplicity: while, of the objects thus contrasted with it, the diversity is without end.

Of the mass of burthens imposed by the exaction of money, the first in extent and importance, is that, the imposition of which has for its object the provision made for the exigencies of the whole community taken together as such, *i. e.* for the rendering of such services of which the whole community, taken together, stands in need. This branch will be subject to a division, which has its source in the nature of the different branches of the public service.

To the same head belongs the consideration of such monies as may be required for the service of the several portions of territory into which the whole of the territory belonging to the whole of the community stands divided: for example—for roads, rivers, and all other communications by land or water; provisions for security against calamity; provisions for security against hostility on the part of internal adversaries, by arrangements of a preventive nature; and also, such monies, the employment of which has for its object, the giving positive increase to the sum of felicity: for example, the establishment of public schools.

In regard to services, by the exaction of which burthens are imposed on individuals for the benefit of individuals, the first division that requires to be made is, that between such services as require to be exacted in virtue and in pursuance of contract, and such services as may require to be exacted without contract.

In the case of a contract, a burthen is imposed on each side: but, on each side, error and unforeseen evil consequences excepted, a benefit, more than equivalent to the burthen, is received.

To enter into the details necessary to the laying down of the rules, indicated by the regard due to the greatest happiness of the greatest number, on the subjects of contracts,—though the rules were no others than such as have application to all contracts without distinction,—would require more room than could be allotted to such a subject, consistently with the nature and limits of the present design. The like applies to the case of such services as require to be exacted of individuals for the benefit of individuals without contract.

Of these services, the most extensive and most important class is of a negative description. It is rendered by abstinence from all acts by which injury in any shape would be done to assignable individuals.

It is by the exaction of these services that security is afforded to individuals.

The art of government has therefore been the art of extracting from the persons over whom the powers of government are exercised, service in all shapes in which it is regarded as contributing to the happiness of those same rulers.

Services are extracted by fear, through the medium of penal laws: by hope, through the medium of patronage: by delusion, through the medium of factitious dignity. By penal laws, it is only in this or that particular shape, on this or that particular occasion, that service can be extracted: by patronage and factitious dignity, it is extracted in all imaginable shapes, and on all occasions.

CHAPTER IV.

PENAL LAW.

The accession made to the stock of happiness by everything that is actually done by the power of the law, is extremely small, in comparison with that which is made by the expectation of what it eventually will do: what it does by affording compensation, in comparison with what it is expected eventually to do, in the way of punishment.

In the way of compensation, it makes not any positive addition to the stock of happiness: all it does is, to reduce a defalcation that has been made from the stock of happiness. It creates not any instrument of felicity—towards augmentation, or rather lessening the diminution in, the stock of felicity; all that it can do is, by transferring a portion of the stock of these instruments from hands in which it would have produced less, into hands in which it will produce more, felicity. This is the utmost which it does in the most favourable case. The most favourable case is where, at the charge of an indigent man, injury having been sustained at the hands of a rich

man, it affords him compensation at the charge of the rich man. Suppose, that taking advantage of the injury, to promote equality without detriment to security, it renders the condition of the indigent man, at the expense of the rich man, better than it was before the injury, still, along with the good thus done, factitious evil created by the law is mixed.

On the other hand, whatsoever of good is produced by expectation of what the law will eventually do—all this good is pure.

The penal branch of law has for its object and occupation, the giving execution and effect to the civil or distributive branch; as also a portion of the constitutional branch: such is the benefit conferred, or sought to be conferred by it. But no benefit, as we have seen, can have existence, but with, and by means of, a correspondent burthen. No profit without loss: without expenditure and expense, which is voluntary loss. What remains is, that in quantity and value, the benefit—the profit—be as great, the burthen—the loss—as small as possible.

For rendering it such, keep in mind this radical allusion. The community is the body politic. Misdeeds are its disorders. Occupied on the penal branch of law, the legislator is its medical practitioner—its surgeon. In a surgical operation the cure is the benefit: the pain of the patient the burthen. The operations of the surgeon have for their object, the rendering the cure as prompt and as complete as possible, at the expense of as little pain as possible.

The surgeon, when he cuts into the bladder of the patient for the extraction of a stone—does he say, the patient *deserves* to be so cut? Not he indeed: by no surgeon was any such absurdity ever uttered.

The possessor of political power—the magistrate—the legislator—has, at all times, in all places, uttered it without a blush. Why? Because, at all times, in all places, till yesterday, and in the new world, the magistrate—the legislator—such is man's nature—have been tyrants: tyrants having each of them, for the object of his acts as such—not the greatest happiness of the greatest number, but his own single greatest happiness.

In the origin from which he deduced the word, indicative of the demand for, or propriety of, the punishment, he was occupied in the application of,—he found a pretence for tyranny: for tyranny exercising itself in the taking of vengeance. The term *desert*, (which is not applicable without hazarding the production of useless punishment to an indefinite extent,) is, and ever was, in use to be employed (without hazard of any such evil,) where, on the occasion of a contract for service between individual and individual, good, in the shape of reward, was to be applied: on the one part, the work contracted for, has been done—the service has been performed: at the hands, and at the expense of, the other, title has been made, to the correspondent service: the pay—the *reward*—has been *deserved*.

Hence arise two radical positions:—

1. Objects which punishment ought never to propose to itself are, vengeance, establishment of imaginary congruity and equality between transgression and punishment.

2. Objects which punishment ought ever to propose to itself are, Compensation, in so far as the nature of the case admits of the application of it, for the evil produced by the misdeed: prevention of the commission of similar misdeeds in future, as well by the misdoer himself as by all other individuals taken at large.

Exacted at the expense of the evil doer, compensation necessitates suffering: exacted in consideration of, and in proportion to, the evil done by him, that suffering, by the whole amount of it, operates as punishment.

In the first place, compensation for the party injured: in the next place, over and above compensation, punishment for the benefit of the public, and punishment for appeasement of the wrath of the offended and wrathful monarch—such is the arithmetic of tyranny. Punishment, including to the profit of the monarch, the exaction of the whole of that matter by which compensation to the individual injured, might have been afforded; after that, compensation or no compensation to the individual injured—such is the order, the method of tyranny. Compensation by one course of procedure: punishment by another, and a different course of procedure; reformation, by health given to the soul, by a third and different course of procedure: such is the arithmetic of lawyer-craft—confederate partner and instrument of tyranny; of lawyer-craft in its most rapacious character, and elaborate garb—the character and garb of the English lawyer.

Compensation and satisfaction are synonymous. Of the word compensation, the psychological import has its root in the physical idea of weight: compensation is weight for weight: satisfaction is giving enough for what has been suffered, in such sort that the weight of the good in the scale of enjoyment, shall be equal to the weight of the evil in the scale of suffering.

Satisfaction has been distinguished into lucrative and vindictive. Lucrative is satisfaction in any shape, considered otherwise than with a view to vengeance. Vindictive satisfaction, is satisfaction in any shape, considered with a view to vengeance.

In no shape or quantity should suffering be created, for the single purpose of affording satisfaction of the vindictive kind.

Only when, for the sake of the community at large, punishment is inflicted, if there be any shape by which (without increase of suffering to the wrong-doer) satisfaction to the individual wronged, may be administered, that shape may be employed.

By that shape, the apprehension of the eventual punishment may, moreover, be rendered the more impressive upon the mind of him, on whom the temptation to do the wrong is operating.

To the word punishment, lawyercraft, in confederacy with religious fraud and hypocrisy—and in subserviency to monarchical tyranny, has, of late years, furnished a synonym—viz. visitation—penal visitation.

In the language of the English translation of the Bible, *visitation* is employed as synonymous to punishment, Synonymous? But in what case?—where the misdoer being a man, the ruler is the invisible Almighty. Considered in this point of view, sin is the name employed for the designation of the misdeed.

Of the Almighty invisible, whose throne is in heaven, the monarch is the visible representative here on earth: the representative, according to the certificate given to him by Blackstone: invested with no small part—with as large a part as is necessary for the accomplishment of the indisputable object of his government—the greatest happiness of him in comparison of whom all others are but as creatures to their Creator,—invested, in a word, with a completely sufficient part of his divine constituent attributes. By the alleged offender, a misdeed has been committed. By this misdeed, the monarch has been offended. The monarch, being god upon earth, the offence is a sin. Sins deserve to be visited. For this his sin, this sinner deserves to be visited. At the charge of him by whom sin has been committed, punishment is due. Proportioned to the dignity of the offended ruler, should be the magnitude of the punishment. Where the offended ruler is that God which is in heaven, dignity being infinite, that punishment ought to be, and is, in each instance, infinite. Where the offended ruler is that god which is on earth, the punishment ought not to be infinite, it ought only to be next to infinite. Were justice alone consulted, such, accordingly, would be the punishment of this sinner. But in the heart of that god which is upon earth, and with us, justice has, for her never-failing companion and appeaser, mercy. Mercy has for her function the rendering of no effect to an amount more or less considerable, the decrees of justice. In this, as in all other cases, mercy has interposed, and,—after deducting from what has been ordained by justice, what has been substracted from it by mercy,—the balance forms that punishment which the sentence is about to declare.

In relation to punishment, considered as so much evil, employed as a means for excluding,—as far as possible, without greater evil, evil considered as producible by misdeeds, thus converted into offences, three main questions on every occasion present themselves.

In what cases shall punishment be applied?
In what proportion?
In what shape?

In what cases shall it be applied? To a question of the opposite aspect,—the question, in what cases shall it not be applied?—a more commodious, howsoever indirect, answer, may be given.

Where it would be groundless.
Where it would be needless.
Where it would be inefficacious.
Where it would be unprofitable.

In each one of these cases, supposing them realized, punishment, it is evidently manifest, would be unapt: of all these cases, it may be said, they are unmeet for punishment.

Case the first.—Where punishment would be groundless: where the application of punishment would be unapt. Necessarily included in the notion of punishment is the notion of misdeed done, of offence given. Of the sort of operation by which, for the exclusion of greater evil, evil is purposely produced, the operation called punition, or more commonly punishment, is but one mode. For, taken by itself, government is in itself one vast evil: only except, in so far as evil, already produced by it, is done away or lessened, can any exercise of government be performed—can the power of government be in any way exercised, but evil is produced by it. But wherever, by evil thus produced, greater evil is excluded, the balance takes the nature, shape, and name of good; and government is justified in the production of it. In this case in the account of good and evil, the evil produced and applied in the shape of punishment would, unless it excluded some greater evil, or produced some preponderant good, be all loss.

Thus it is, that where evil applied as punishment would be groundless, what will often happen, is—that evil produced, though designedly, is not causeless—is not unjustifiable.

Where it would be needless. Here the circumstance from which the evil receives the denomination of punishment, viz. misdoing, offence has place: as such, evil is among the consequences of it. But, by the operation of some other cause, all the relative good that could be done by the evil of punishment, is done without it. In this case, therefore, whatsoever portion of punishment were applied, would be all loss.

Where it would be inefficacious. In this case, too, be the evil of the offence ever so great, the evil of punishment, though it could not be said to be needless, would, however, be all loss; to the undiminished evil of the offence, would be added the evil of the punishment.

Where the punishment would be unprofitable. Of the evil which, in its totality, would otherwise be produced by the offence, a portion, more or less considerable, would be excluded by the punishment; but the evil thus introduced is greater than the evil excluded by it.

In the three former cases, the evil of the

punishment is all loss: in this last case, the evil produced is not all loss, but, after deducting, from the sum of what is produced by it the sum of what is excluded by it, there still remains on the balance a net remainder, or difference, which is so much loss.

Comprehensive, and on that account, theoretical as the description of these cases may appear, there is not one of them that has not, to a vast and deplorable extent, had its exemplification in practice. To afford an indication of every one of them, would be to give an all-comprehensive picture of whatever has been hitherto done on the field of penal law.

Rules tending to augmentation of punishment:—

In no case leave to the evil-doer any net profit from his evil-doing.

In adjusting the quantum, have regard to all the several articles in the list of aggravating circumstances: circumstances aggravating either the evil of the offence, or on any other score, the demand for punishment. See whether any have had place in the case in question.

In no case suffer anti-conscientious pursuit, or practice, to go unpunished: whether principal or incidental: whether at the commencement the party were in the wrong or in the right: for, by a man whose demand is just, anti-conscientiousness may have been manifested by the practice employed in the pursuit of it.

In particular, if the anti-conscientiousness be accompanied with mendacity.

Rules tending to diminution:—

To the account of punishment, place every pecuniary loss, or other hardship, produced on the part of the *injurer*, by compensation afforded at his expense, to the *injuree*.

So, every suffering produced on his part, by means of the pursuit, whether by pecuniary expense, by loss of time, or by vexation in any other determinate shape.*

CHAPTER V.

PROCEDURE LAW.†

The penal branch of law, as already observed, has for its object and occupation the giving execution and effect to the civil or distributive branch, as also a portion of the constitutional branch. Both together, compose the *substantive* branch of law. The law of judicial procedure constitutes the *adjective* branch of law. This adjective branch has, for its object and occupation, the giving execution and effect to the aforesaid substantive branch.

For the production of this effect, the requisite means are right decision and conformable execution.

To the positive expression right decision, substitute an expression with a negative aspect, it will stand thus:—avoidance of misdecision.

In so far as the law is of a beneficial nature, giving execution and effect to it, will, bating accidental preponderant evil, be in a like manner a benefit. But as above, in the field of law no benefit can have place, without its attendant burthen.

The burthens inseparably attendant on judicial procedure stand comprised, the whole assemblage of them, within the import of three words—vexation, delay, and expense.

To give to the benefit, the utmost practicable extent, to confine the burthen within the narrowest practicable limits—to these two perfectly distinct, but intimately connected, modes of promoting the greatest happiness of the greatest number, the one positive the other negative, it belongs to the legislator to direct his operations.

Here, then, we have two conjunct ends of judicial procedure: main or direct end; right decision, or say, avoidance of misdecision; collateral end, avoidance of vexation, expense and delay.

Decision is right, in so far as, by giving execution and effect to it, the will expressed by the law is conformed to—the eventual predictions delivered by the law, carried into effect. Here, then, on every occasion, is a standard composed of a certain portion of a certain text of the law, to which, to give warrant to his claim, by him by whom a call is made for execution and effect to be given to the law, reference, direct or implied, must be made.

But to constitute any such claim, the existence of some individual matter of fact or state of things, must be asserted: and in consideration of the existence of this matter of fact, a demand must be made that execution and effect may be given to that same corresponding portion of the body of the law.

Misdecision is liable to be produced—either by the non-existence of any portion of law applicable to the case, or by the misinterpretation of this or that portion of law, applicable to the case.

In the former of these cases, if any decision at all—if any decision to any other effect than that of the rejection of the claim be pronounced by the judge, misdecision is an appellation which, with unquestionable propriety, may be applied to it. For, in this case, by the supposition, there is no ground for it. In this case, are all decisions whatsoever, in so far as they have for their pretended ground, the sort of non-entity called common or unwritten law: a spurious ground which, by the supposition, is not the work of the legislator—is not the work of any person having authority to make law, or so much as claiming authority to make law.

* For farther elucidations on the subject of this chapter, see the Principles of Morals and Legislation, and cognate works, in vol. i.

† See Principles of Judicial Procedure, with the Outlines of a Procedure Code, in vol. ii.

In the supposition of misdecision from misinterpretation, the supposition of the existence of a portion of *real* law, applicable to the case, is involved: where there is nothing to interpret, no such thing as misinterpretation can have place.

In the first case, the evil has, for its manifest cause, negligence on the part of the legislator.

This negligence has not at present either justification, or any the least shadow of excuse.

In the early stages of society, the evil was not the result of negligence: the nature of things rendered it an unavoidable one: particular cases presenting a demand for legislation had not, as yet, presented themselves in any quantity or variety, capable of affording any adequate idea of any extensive, much less of any all-comprehensive, body of law.

All this time, as often as compensation or satisfaction for evil suffered at the hand of another was claimed, the judge, if he did any thing, did as he would have done, if a law had been already made, containing the description of a genus or species of case, in which the individual case before him was comprehended.

In the case of every decision thus pronounced, the very sort of evil had place which, in the present state of things, is produced by what is called an *ex post facto* law: on the part of the defendant, no expectation of finding any such burthen imposed upon him, previously entertained: no cause for abstaining from the act, on the ground of which the burthen was imposed, present to his mind: consequence on his part, sufferance from a burthen which, had a law to the effect in question been already in existence, and sufficiently known to him, might not have had place.

What in this case is neither impossible, nor out of the ordinary course of things, is—that, by some general conception of the several sorts of acts by which the greatest happiness of the greatest number is liable to be impaired, he may have been led to the conception that the act for which the burthen has been imposed upon him, is in its nature of that number, and on that score might come to be taken by a judge, as a sufficient cause for dealing with him, as in effect he has been dealt with. But in comparison with a state of society which furnishes a real law actually applying to the case, how wretched that state of society cannot but be, in which the rule of action is left in an ever floating state, must be sufficiently obvious.

On any part of the field of human action, a body of law, conceived in general terms, cannot have been framed on adequate grounds, except in so far as a certain stock of individual cases spread over that same ground, and constituting a demand for legislation,—have rendered themselves present to the mind of the legislator. The greater the length of time during which the government in question has continued in existence, the greater the extent of the country and of the population subject to it; the greater will have been the number of those individual cases, that will have presented themselves to the cognizance of the judge. But, let the stock of those cases thus presented have been ever so numerous, only in proportion as some unperishable memorial has been made of them, can they have had the effect of contributing to furnish the legislator with this necessary ground. Memorials affording indication, more or less particular, of individual cases of this sort, as having, on such or such grounds, called for decision at the hands of the judge, and on such and such grounds, received decision accordingly, are, in the language of English jurisprudence, called by the common appellation of *Reports*.

In no other country upon earth, have these indispensable grounds for apt legislation presented themselves, invested with permanence by the press, in any variety or extent, comparable to that which stands exemplified in English jurisprudence.

Thus it is, that, from a combination of causes for which no room can be found here, no country upon earth affords so rich and apposite a stock of materials and grounds for legislation; while, on the other hand, by an unhappy fatality, no civilized country on earth can be assigned which is so likely to be the last in which the appropriate use of those riches will have been made.

On the occasion of each individual course of judicial procedure, there are two necessarily distinguishable questions,—the question of law, and the question of fact: whether the state of the law is as alleged, and whether the state of facts is as alleged.

If so it be that the state of the law is really as alleged, the bringing to the view of the judge that part of the law on which the claimant grounds his claim cannot be attended with much difficulty.

Not so the bringing to view the state of facts.

The means or instruments by which a state of facts is thus brought to view, and the persuasion of its existence endeavoured to be established, in the minds of those to whom it appertains to form a decision in relation to it, are called the evidences, or, by one collective appellation, the evidence.

Under one or other of two denominations,—things and persons,—every imaginable source of evidence will be found comprisable.

It is not to any comparatively great extent that, for a purpose such as this, things themselves—material bodies—can, without the intervention of persons, be brought within the view of the judge. In the most common case, it is only by the account given of it—by the report made of it—by the discourse held, or the deportment exhibited, in relation to it, by some person or persons denominated on this occasion witnesses, that the state of things in question, real or alleged, is brought to the view of the judge.

So far as depends upon the single exertions of the claimant himself in the bringing to view, on each occasion, the mass of evidence thus described, there will not, in general, be much difficulty.

But, most commonly for the production of the necessary mass of evidence, in addition to, or instead of, all operations performable by the claimant himself, appropriate operations, performed by other persons, (neither to the number of whom, nor to the distance of whose residence from the seat of judicature, can any determinate limits be assigned,) may be necessary: and, in the instance of each such person, either willingness or reluctance may, to any degree, have place.

Here, then, for one main purpose, viz. the yielding evidence, there will, on each occasion, be a need, that either things, or persons, or both, should be forthcoming at the seat of judicature. Here, accordingly, one main problem presents itself for solution at the hands of the legislator—how to secure forthcomingness on the part of persons and things for the purpose of evidence.

Saving the accidental case of a mutually voluntary application of the possessors of two conflicting interests, for a decision at the hands of the judge,—a claim of this sort cannot be preferred without experiencing, at the hands of some other person or persons, more or less reluctance. If not in reality, at any rate in belief, the object of the claim will always be some benefit. But no benefit, as before mentioned, can exist without a correspondent burthen. The benefit required at the hands of the judge by the claimant, cannot be granted but in so far as, upon some other person or persons, a correspondent burthen is imposed.

For the attainment of this benefit, to cause this burthen to be imposed, will throughout be the object and continual endeavour of the one party: to avoid the imposition of it, that of the other party, who will act on the occasion the part of a defendant.

Where punishment is out of the question, at the commencement of any course of judicial procedure, the natural state of things is, in the first place, on the part of the claimant, voluntary appearance at the seat of judicature for the purpose of preferring his demand: thereupon, from the judge, if upon hearing the claim, a sufficient ground has been made for subjecting the other party to the vexation inseparable from defence, summons to that party either to do that which the claim requires him to do, or to appear at a certain day and hour at that same seat of judicature, to defend himself against it.

This is the most obvious, and, upon the face of it, the least vexatious mode of giving commencement to a suit. But there are various circumstances by which a departure from it, in some way or other, may be rendered matter of convenience, or even of necessity, as where, by a party on the defendant's side, he knowing himself to be in the wrong, his person, or any property of his, would be to be disposed of in any manner burthensome to him by the decision of the judge, *voluntary* appearance on his part, cannot reasonably be to be depended upon. By bare notice to him of that which is in contemplation to be done, the possibility of its being done, may be done away.

When the suit has commenced, let evidence be received from any and every source—exclude none. For, if any evidence is excluded, there will be danger of misdecision.*

As a security against improper conduct on the part of the judges and all other functionaries, the utmost publicity must be given to all judicial proceedings.

CHAPTER VI.

FINANCIAL LAW.

The financial department, is that by which is performed the extraction, custody, and expenditure of such money and money's worth, as is employed, or professed to be employed, in the public service: viz. in this and the several other branches of the public service.

Whatsoever be the public function, by the exercise of which service is rendered, or pretended to be rendered to the public, or to any part of it; money, or money's worth, or both, are, in a quantity more or less considerable, necessary to be employed and disbursed on the occasion of its being rendered: the financial branch is thus a branch which intertwines itself, and runs through the several other branches of the public service.

This branch of government has for its proper end, that branch of good economy which consists of appropriate frugality.

Of economy there are two branches: the one positive, or say, distributive; the other negative, or say, restrictive.

The distributive branch has for its object, the due appropriation of the aggregate of the sums levied, to the several services for which they are levied.

The restrictive branch has for its object, avoidance of all exaction, the burthensomeness of which is not outweighed by the usefulness of the application made of it.

For judging of the consistency of any mass of expenditure with the proper ends of economy, take for a test this directive rule: with the alleged benefit, alleged to be expected from the expenditure, compare the unquestionable burthen produced by a tax to the same amount: forego the benefit, the burthen is excluded.

Taken in its narrowest and most ordinary sense, economy in a state, has for its subject-matter money and money's worth; taken in

* See this subject considered in detail in the Rationale of Evidence, in vols. vi. and vii.

its most extensive sense, it comprehends the matter of reward, in those additional shapes in which it is to government that it is indebted for its existence,—viz. power and factitious honour.

In what way may the principle of minimization, and other safeguards, be applied with the greatest advantage to the case of money?

By observation of the following rules, viz.:—

Except as excepted, suffer no man to make for himself profit, in any shape, from public money deposited in his hands, or at his disposal.

In the instance of each functionary, having in charge any of the public money, minimize the quantity of it.

Not suffering to be lodged in the hands of any money-keeping functionary, money in any quantity, exceeding the sum in relation to which he has obtained *fide-jussors*, bound by agreement, on their part, to the eventual payment thereof into the hands of some government functionary, in the event of his failing to pay it when called upon in due course.

If there be, or can be brought into existence, any banking-company of sufficient pecuniary trustworthiness, who are willing to receive public money upon the ordinary terms, — keep as much as may be in their hands, ordering matters, at the same time, by law, in such sort, that in case of failure, the public shall have the preference as against all private creditors.

By this means, instead of paying functionaries of its own, for the keeping of the public money in their charge, the government may so order matters, as to receive a compensation for money so deposited by it.

The keeping of money by the government of a country, in treasuries of its own, is but a makeshift employed by necessity, where no sufficiently trustworthy banking-company for the keeping of it can be found.

By some governments, the concurrence of functionaries more than one has been rendered necessary to the issue of each sum from a public treasury; and to render this concurrence necessary, physical means have been employed: such as the rendering the opening of locks more than one, necessary to the extraction of it: locks, to the opening of which, so many keys of different forms are necessary, and allotting to that same number of persons the custody of the keys. In Russia, such has accordingly been the practice, as appears by an ordinance of the Empress Catherine, creative of an official establishment for the several provinces of the empire. The inconvenience here is, that there must be a number of functionaries unremittingly occupied, and, on account of the constancy of their attendance, and the magnitude of the trust, highly paid.

In every department of the public service, good management has two perfectly distinguishable branches: the first peculiar to itself, being correspondent to the particular nature of the service: the other common to it, with all the others,—this universally applying branch of good management is frugality.

Considered in another point of view, the peculiar and characteristic branch here spoken of may be styled the positive branch: this, which is common to all, the negative branch. The dictates of frugality are conformed to in so far as, without preponderant prejudice to good management in other respects, money and money's worth, is avoided to be disbursed or consumed.

In a representative democracy, all the several departments having for their actual end good management as applied to each, the financial department has for its actual end frugality, as above defined.

In a pure monarchy, when that expenditure which is employed in giving supply to that waste, by which gratification is afforded, or endeavoured to be afforded, to the appetites of the monarch, his favourites, and instruments,—of which the expense of the war department constitutes always the most expensive article, this branch has for its actual end the same as that which in a representative democracy it has: viz. frugality: the same, with whatsoever inferiority in respect of uniformity, steadiness, and success pursued. Even in the war department, frugality is, in all the details, an object actually pursued: of the dictates of frugality, the only one purposely violated is that, by the observance of which, by far the greatest part of the whole expense of this department would be struck off: viz. that part which has for its object, the carrying on a perpetual offensive war against the subject many, instead of keeping their physical force, without expense, in a state of constant preparation for defensive war against foreign nations.

In a limited monarchy, the financial department has for its actual end, the opposite of frugality, waste—the maximum of waste.

Under this form of government, this waste has three objects:—

Personal gratification to the several appetites of the ruling one, and the sub-ruling influential and opulent few. This object, in so far as regards the appetites of the ruling one, it has in common with absolute monarchy.

Corruption: exercise of corruptive influence for the purpose of securing corrupt obsequiousness, on the part of those, whose declared duty, and professed endeavour it is, to keep applied to the respective powers of the monarch, and the sub-ruling portion of the aristocracy, those limitations which they respectively acknowledge: corrupt obsequiousness, to the effect of causing them to forbear from keeping actually applied, those several limitations: thus rendering the government, in form and pretence, limited: in effect, to the benefit of the ruling one, and the sub-ruling influential and opulent few, to the sacrifice of the greatest happiness of the greatest number.

Delusion.—In so far as the waste applies itself, by means of corruptive influence, to the production of corrupt obsequiousness, on the part of those self-acknowledged and self-professed trustees for the whole community, it employs itself in rendering them, and, in so far as it produces its intended effect, it actually does render them, by so much inferior, in respect of public virtue and good behaviour —in respect of benevolence, and that beneficence which is the fruit of benevolence upon the largest scale;—inferior to the rest of the community taken at large, inferior to the subject many, inferior to the vast majority of the whole population of the country. In the same proportion as those, on whose part corrupt obsequiousness is produced, are rendered inferior in these respects, are those rendered, by whose corruptive influence this corrupt obsequiousness is produced, or at least, in an equal degree, inferior.

In so far as with reference to that better, and happily larger, portion of the whole community, they are regarded as being, in the scale of public virtue and good behaviour, superior or equal, delusion has place. Raising up to its maximum, the degree and effect of this delusion, is a third purpose in which, under this form of government, public waste employs itself.

In proportion to the quantity in which the waste employs itself in the affording of gratification to the appetites of the individuals in question, and by the whole of that quantity, the purpose of delusion is completely accomplished, and the purpose of corruption in a principal degree. To screw up the effect of corruptive influence to its maximum, may probably require endeavours, to an amount more or less considerable, specially directed to that purpose: such endeavours being accordingly nowhere, and never wanting,—means are wanting for pronouncing, by any sufficiently grounded judgment, whether, without such endeavours, the mere possession of that same or any other quantity of the subject matter of waste, operating of *itself*, in the character of matter of corruptive influence, would, in the hands in question, be adequate to the production of the actual effect. Be this as it may, it will be, if it is not already sufficiently manifest, that, by the same quantity of the matter of wealth thus expended in waste, by the hands in question, in addition to the gratification of the several appetites, those two other purposes, corruption and delusion—all three, (though so inseparably connected, so perfectly distinguishable from each other,) are produced.

Look, for example, to the situation of the monarch. In the procuring to him, for example, that sort of gratification which is afforded by quick motion, together with prompt conveyance at all times, to the several different places at which a promise is afforded of successive gratification to his several other appetites,—horses, in vast multitudes, each, in respect of its capacity of affording gratification to those by whom it is used and abused, brought, by a long and expensive course of training, to the most exquisite degree of perfection possible,—the labour of men, in correspondent multitudes, having been exclusively consecrated to this one purpose, a proportionable quantity of money has necessarily been employed. But, for an establishment of this kind, good management, so far as regards aptitude for the service, is really desired. In the hands of an individual, and not in those of a board, is this branch of the public service accordingly lodged. For were it in the hands of a board, each member in reality, as well as in name and pretence, bearing a part in the business, what is sufficiently understood is—that there never would be a horse fit for service: each member would appoint to the management of one of the sacred horses, some dependant of his, who had never had anything to do with horses. Constituting a necessary exception to the general rule, this branch of the public service will therefore, of necessity, have found itself in individual hands.

For performing, in the best possible manner, this important service, were this the whole of the service thought fit to be required at the hands of the individual, an extremely moderate annual salary, not more than ten or twenty times the expenditure of an individual whose severe and bodily labour is employed in the production of the money for the purchase and maintenance of these four-footed, and pre-eminently favoured subjects of a monarchy, would be sufficient. But, in this instance, good economy, in an additional shape, is found practicable and profitable. Instead of no more than ten or twenty times the salary necessary for the maintenance of an individual of the productively labouring class, let two hundred, or though it were but one hundred, times that amount, be allotted, individuals might in the very highest rank, next to that of the royal family, be found—individuals in multitudes, who, being in a state of constant appetency for such a place, and thence in a state of constant competition with each other, will thereby be placed in a state of equally constant and proportionably abject and corrupt obsequiousness. With relation to the corruptive influence, exercised with or without his caring or thinking anything about the matter, by the royal proprietor of these consecrated quadrupeds, so many as there are of these competitors, so many men are there whose votes, and in so far as they have the faculty of speech, their speeches, are in readiness to contribute to the fulfilment of the will, and the gratification of the correspondent appetite, of him, whom it is their ambition to be entitled to designate by the appellation of their royal master.

Thus much as to the effect in that house which is styled right honourable; but in some, if not all these instances, what will have place

moreover is that, to these several superlatively, although it be but positively, noble persons, may appertain, through the medium of this or that borough, or of this or that county, a seat or seats, to the number of from two to ten, in that other House, so inferior in dignity, so superior in power, which in style and title, is no more than simply *honourable*. Of the appetites to which, in the case of the monarch, gratification is sought to be afforded, one, nor that the least voracious, is—that appetite or desire of esteem, respect, love, or at least the exterior evidences of them, true or false—that desire which, notwithstanding the complicatedness of its object, is in one word commonly designated by the appellation of pride. Proportioned to the depth to which the humiliation of the individual at whose expense this gratification is afforded descends, is the intensity of the gratification. But, proportioned to the antecedent elevation of this individual in the scale of dignity, natural or factitious, or both together, is the relative depth of the humiliation to which, on any given occasion, for any particular purpose, he is capable of lowering himself. By the holding of the bridle of a favourite horse, while the royal master is in the act of mounting—by this or any other act performed in the execution of his office, the utmost length of the descent, capable of being made by the man, the magnitude of whose salary was determined by no higher mark of value, than that which corresponded to the skill possessed and exercised by him, in the field of this particular office and profession, could not at the utmost, be any greater than that which corresponds to the difference between the pay of this official functionary, and the pay of an ordinary groom. But the amount of the pay which, in consideration of the exalted station occupied by the titled and most noble, though unskilled attendant upon horses, is ten times the amount of the pay which it would be convenient and advisable to give to the untitled but well-skilled functionary, and thereby a hundred times the amount of that which good economy would require to be given to the untitled and unskilled attendant.

The consequence is, that if as between the inward sensation and the external cause—between the quantity of actual gratification, and the quantity of the instrument of gratification—the proportion were correspondent, and kept pace,—the intensity of the gratification afforded to the royal rider, by the view of the humiliation submitted to by the most noble holder of the horse, would be ten times the amount of the gratification afforded to a most excellent king, by the view of the humiliation, if any, submitted to, by the untitled but well-skilled holder.

Thus it is that one and the same quantity of the matter of wealth, employed in waste—wasted in the vain endeavour to inject an additional quantity of happiness into a receptacle over and over again disabled from the capacity of receiving any more—this same quantity of wealth is employed to the three purposes at once, viz. gratification of the royal appetites, securing of corrupt obsequiousness, and the production of delusion.

In the case where production of corrupt obsequiousness was the object, the persons on whom the operation was performed were the subruling, influential, and opulent few, with no other addition than that of that comparatively small portion of the subject many, to whom the corruptive influence of these their superiors could be applied, for the purpose of producing correspondent corrupt obsequiousness. In the case of delusion, the persons on whom the effect is endeavoured to be produced, are, in addition to the subruling, the influential and the opulent few,—(for these are not less exposed to, nor less susceptible of, the delusion than the many)—the subject many, likewise,—in a word, the whole of the community without exception—the royal chief himself, by whom the benefit of the delusion was reaped in the greatest abundance, not excepted.

The opinion endeavoured to be inculcated in the case in question, is that the quantity of the matter of wealth so employed and produced, if not employed in the making a clear addition to the happiness of the greatest number, is employed at any rate to some other equally or superiorly proper purpose. Whatsoever be the quality or other thing designated by the word excellency, such is the excellence that belongs to them, (whether it be exaltation in the scale of virtue, public or private, or both; or exaltation in any other scale of still superior dignity—say, for example, piety,) that, whatsoever quantity of the matter of wealth, instead of being left in each instance at the disposal of those by whose labour and capital it has been produced,—is employed in the endeavour to afford additional gratification to the appetites of these same exalted persons, is employed in a manner more useful, more dignified, or on some other account, more laudable, than it would have been had it been left to pursue its original destination as above.

In regard to usefulness, (if so plain and vulgar an effect and quality were regarded as worth attending to,) it would lie on those by whom, on this ground, this diverting of the matter in question from its originally intended destination to this new one, were justified to prove it: but in regard to this quality, the existence of it, being altogether incapable of being proved, is of necessity and with the utmost composure assumed.

If ever the existence of it should be endeavoured to be proved, it would of necessity be in some such shape as this: the quantity of obsequiousness necessary to the production of good government, and thence, (if so pedantic, uncourtly, democratical, jacobinical, anarchical, and impious, a phrase be insisted upon,)

the greatest happiness of the greatest number, is by means of the application thus made of the quantity in question of the matter of wealth, actually promoted: but as, if of that quantity of wealth no part at all were thus employed, civil society would not, to any effect, have existence, so by any and every defalcation made from the quantity of that precious matter thus applied, a proportionable defalcation from the quantity of happiness enjoyed by the greatest number, would be made.

To this latter assertion there are two answers.

One is—that it is a mere assertion altogether destitute of any ground, that ever has been attempted to be made, or, in the nature of the case is capable of being made good.

The other is—that such experience, as the nature of the case has been capable of furnishing, operates the whole of it, in contradiction to this same assertion. The political states by which this body of experience has been furnished, are the confederated body of the Anglo-American States: original number of them, at the time of their declaration of independence, thirteen: that number, by successive accessions, augmented to its present number, twenty-two or twenty-three. In no one of these has the matter of wealth, in any quantity whatsoever, been applied to the gratification of personal appetite in any shape; either to the person of the chief, or any other functionary; or to the purpose of producing by means of corruptive influence, corrupt obsequiousness; or to any purpose to which the appellation of delusion can with any propriety be applied. If in the situation of the chief functionary of the whole confederacy, the matter of wealth has in any quantity, been applied to any one of these purposes, so small is the utmost quantity that can be suspected of being so applied, that it can scarcely, with reference to any such subject as that in question, be spoken of, as worth notice.

The sources or modes, actual and customary, of wasteful expenditure, may be distinguished into two classes, having quantity for their mark of distinction,—viz. wholesale and retail. The wholesale may again be distinguished into those which are essential to the form of government and those which, howsoever congenial, are incidental to it.

The matter of wasteful expenditure, essential to the form of government is in the case of an absolute monarchy, the difference between the pay of the monarch and the least pay sufficient for the president of a representative democracy.

In the case of a limited monarchy, it is that same quantity with the addition of the quantity employed in the works of corruption and delusion, as already seen: corruption, applied more immediately to the representative of the people: delusion, applied more efficiently and needfully to the people themselves.

Pensions of retreat may be stated as being altogether needless: and to say that which is thus disposed of is given needlessly is to say that it is given in waste.

Allowances thus made may either be made with certainty, in virtue of general rules applied to all individual cases; or incidentally, for special cause assigned, in each individual case. To the first case, preferably at least, if not exclusively, apply the observations following.

Labour applied directly to a man's own use, or indirectly in exchange for an equivalent given by an individual in return for it, is one source of subsistence: labour employed for an equivalent in the service of government, that is, of the public at large, is another source. In the first case, generally speaking, no such allowance of reward, after service has ceased, has place. In the case of him whose subsistence is derived from dealings with the public at large, as in the case of a wholesale or retail trader, a master-manufacturer, an artisan, or a manufacturer, it is impossible. In the case of habitual service, rendered by contract to an individual, there is no custom for it. The case of incapacity produced by age or disease, is a case equally open to expectancy in both instances. From the time of his embarking in his profit-seeking occupation, a man makes for all such contingencies such provision as his means enable him to make, and his prudence disposes him to make. For the securing to individuals any such extraordinary supply at the expense of the public, there is, if there be any difference, less demand in the case of an occupation pursued by the rendering of service to the public for hire, than in the case of him whose subsistence, as above, is derived from commercial dealings with individuals.

In the case of a public functionary, a man's income is completely certain,—certain as to its existence, certain as to its quantity: in the other case, it is altogether uncertain in both respects.

Among profit-seeking occupations at large, there are those, to a great extent, in the whole, in which, by the nature of the occupation, men are exposed to the danger of ceasing to derive subsistence from that or any other source. With the single exception of military service by land or water, no such exposure has place in the case of public functionaries.*

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* If there were a case affording a proper exception to this rule, it should naturally be that of a man occupying a judicial office. One day the conversation happening to touch upon this subject, a distinguished functionary of the Anglo-American United States, mentioned to me as a case that had fallen within his own knowledge, that of a judge who, by a stroke of the palsy, had been reduced to a state of complete helplessness. Well: and what was the provision made for him? None at all: there was no fund for it. What?—no fund for such a case? No: for there is no need of it. No need of it? No: and thereupon came an intimation of the principle that has been seen in the text.

First among the useless places, in addition to that of the monarch himself, is the whole of the establishment kept up for the service of the person of the chief functionary in a monarchy: kept up, as the phrase is, for the support of his dignity, the maintenance of the lustre of his crown, and the splendour of his throne.

The proof of the uselessness of this office may be seen, as already observed, in the peaceful and flourishing condition of the Anglo-American United States, in which, in the federal state, the pay of the chief functionary is no more than £6000 a-year: and it is rather by imitation and prepossession, it should seem, than by any clear proof or view of a real and adequate demand to that amount, that, in that instance, the allowance of so large a sum was determined.

Secondly, in every country in which the great body of the people profess to believe in the religion of Jesus, in any shape, the whole of the pay allotted at the expense of the subject-many, under the notion of pay for teaching it, and performing the ceremonies that have been attached to it. And note, that pay, produced by the occupation or rent of property in an immoveable shape, is so much extracted at the expense of the subject-many: for by applying that same money to the provision made for real exigencies—money to that same amount, and the suffering produced by the exaction of it might be spared.

Proof of the needlessness of such forced exactions, is the non-existence of any such system for the support of the catholic members of the ecclesiastical establishment in Ireland.

Proof that no such exactions are ordained by, or conformable to, the religion of Jesus—is, that no text in the New Testament is there to be found, speaking of him, as ordaining any such exaction: while various texts ordaining perfect equality, among all the professors of his religion, are to be found.

Pay of useless offices, pay of needless, overpay of useful offices, pay of sinecures, *i. e.* of places to which no duty is attached—these are the shapes in which, at the expense of the greatest happiness of the greatest number, money in excess is extracted from the people, for the benefit of public functionaries.

Remains, that source or mode of wasteful expenditure in the wholesale way which, howsoever congenial, is not essential to the form of government. These are—unnecessary wars, and distant, and thence preponderately expensive, dependencies.

In a representative democracy, unnecessary wars against foreign adversaries can scarcely have existence. For the sake of profit to the supremely ruling body, the people,—in whom is the power of appointment and removal with relation to the operatively ruling body, their representatives,—it is not possible, but what none of them can avoid seeing, is, that, with reference to the utmost possible profit capable of being reaped at the expense of the people of any other state, the expenditure that must be made is not only immediate and certain, but antecedent: as well as, in the ultimate result, greater. Upon their representatives, it is indeed that, in an immediate way, the engaging or not engaging in any such war, would depend. But that which, as above, would be manifest to the least reflecting of the two portions of the community—viz. constituents—would be still more manifest to the most reflecting of those same two bodies, their representatives: in their eyes, accordingly, of the engaging in any such unnecessary war, non-re-election,—that is removal, and with disgrace, would be the certain consequence.

Another conceivable cause of unnecessary war against foreign adversaries, is irritation. But, if not for the commencement, for the continuance, of a war considered as being thus produced, what is necessary, is—that, in the breasts of the majority of the people, hatred of others should be more strong and efficient than love of self. For a small portion of time, and on the part of a small proportion of the people, such predominance is at any rate conceivable. But, for any considerable portion of time, on the part of the majority of such a people, the nature of man considered, it does not seem possible.

In an absolute monarchy, the exemplification of this mode of wasteful expenditure will, of course, be frequent: frequent in proportion to the power the monarch possesses, or regards himself as possessing, with relation to the inhabitants of such states as are within his reach.

In the case of a limited monarchy, the practice will be still more frequent, the propensity still more incessant, and much more intense. For, in this case, whatsoever addition is made to the waste, is so much made to the instrument, the existence and use of which is necessary to this species of monarchy, viz. the corruption fund.

As to distant dependencies, comes to be considered the whole expense of the official establishment, and the aggregate of the stock or *materiel* employed in the maintenance of the power exercised over the inhabitants of territories so circumstanced.

When the expense of the military force by land and sea together, kept up for the defence of the distant dependency in question, is taken into account, it may be questioned whether, in the instance of any nation sending out a colony, the money extracted from it, and employed in lieu of so much money that would otherwise have been extracted by taxes from the inhabitants of the ruling country, has, in *any* instance, been so great as the expense. In general, the loss on this account has been prodigious.

Suppose, for example, that hitherto, in this or that instance, a colony has been a source of net profit to the ruling country. Still, it is not in the nature of the case that it should

long continue so to be. Over the inhabitants of the dependency in question, power cannot be exercised,—from them such profit cannot be extracted, without manifest injury done to them, without manifest oppression exercised upon them. No sooner do they view the case in its true light, than they will resist the injury, and form a determination, and use endeavours to disburthen themselves of it. If, after this, the maintenance of the power of the ruling people, or rather of the rulers of the ruling people, is persevered in, here then is war, civil war: a war, the expense of which, increases with the distance between the country subject to the dominion, and the country which is the seat of it,—to say nothing of the misery caused by such a war.

Loans to foreign powers are another source of wasteful expenditure.

To go no farther back than the revolutionary war, all money thus obtained and disposed of may, with the most perfect truth, though obtained by extortion, be stated as obtained on false pretences—on pretences known by the obtainers to be false.

In fact, of the money thus lent, not a particle has ever been received back. It was not in the nature of the case that, in the minds of those by whom it was obtained, and thus disposed of, any expectation should have been entertained of receiving back any part of it. At the time when, under the name of a loan obtained by the foreign government from this government, the very cause and reason of its being so obtained was,—that from no resources of its own, from no subjects of its own, was it in the power of that foreign government to obtain it. By no degree of success, of which there could have been any tolerably well-grounded prospect, could the power of the foreign government to repay that money, have been increased. On the contrary, after any ordinary degree of success, that power could not but for a long time, have been diminished.

As to security, under the name of security, nothing having the effect of security was given, or could, by the foreign power in question, have been given. Of no portion of territory to serve as a security, was possession given to this government. Of no such portion of territory could any possession have been taken, accompanied with any possibility of raising money out of it, either in the shape of principal, or in the shape of interest, by contributions levied upon the inhabitants. If any such additional contributions could have been levied upon the inhabitants, they would have been levied with abundantly more facility, and abundantly less expense, by their own government than by this government. No such possession could have been kept by this government without a proportionable military force, paid by itself. Instead of reimbursement, the cost of keeping such possession would have been so much addition to the loss.

If, instead of what it was not, or intended to be, a loan, it had been named according to what it was, a subsidy, it would have been productive of two unpleasant effects: of an effect unpleasant to each of the two high contracting parties. To the Emperor of Austria it would have been humiliation: placing him, with no other difference than that occasioned by the difference in the state of society at the two periods, in the situation in which his ancestor, Maximilian, placed himself with relation to our Henry the Eighth. To the subject many in England, it would have displayed the true nature of the transaction, the very object which, for fear of that discontent which would have been so just, was, by this deceit, but too effectually concealed.

That there had not, on either part, been any such intention as, on both parts, was professed, was afterwards more fully confirmed and manifested by an eventual state of things which could not originally have been, on any rational grounds, anticipated. Upon the destruction of all power of resistance on the part of France, she being treated on the footing of a conquered country, was laid under contribution for the joint benefit of all parties to the conquest: garrisons paid by her being kept for a number of years in the country to secure the levying of it. By contributions levied in the manner of taxes, neither the whole of the money, nor any considerable part of it, could even thus, and upon a conquered enemy's country, be levied. At length, however, in the way of loan, capital being received by the conquered government from its own subjects, on government annuities, payable out of additional taxes to be imposed, a part of the money originally stipulated was provided and distributed among the conquering governments. Here, then, was an occasion on which, had there been any intention of repayment, that intention might, could, and would, have been fulfilled. Instead of being sent to Vienna, the whole of the Austrian's share might have been sent to London, or otherwise disposed of to the account of England. Was the whole or any part of it thus disposed of? Not a sixpence.

Hand in hand with waste, is to be found taxation.

Considerable must have been the difference between the quantities of evil produced by the different sorts of taxes resorted to, and the different degrees of mischievousness of those several taxes, even in the best governed state: still more in every other state, in proportion as it is ill governed. Of this inferiority in the scale of aptitude as applied to a tax, the cause may be seen partly in a deficiency in the article of appropriate intellectual aptitude, partly in a deficiency in the article of appropriate moral aptitude, on the part of the authors of the tax: in other words, in a want of wisdom and in a want of feeling: in the one case, if he produces so much needless suffering it is for want of knowing how to find another sort of tax that shall not produce so

much of that undesirable result: in the other case, it is because so as the money is but produced to the treasury, he cares not how much suffering is produced elsewhere by it.

The general and utter absence of all real sensibility ought to be considered as a state of mind inseparable from the situation in question. If the financier professes to be in any degree afflicted by the sufferings of the people, in the character of taxable subjects—the fee-fed judge, by their sufferings in the character of suitors—the fee-fed advocate, by their sufferings in the character of clients, or the great military commander, by their sufferings in the character of soldiers or inhabitants of the theatre of war—the truth of such a profession is possibly not altogether without example; but the examples, if any, are so rare and so inconsistent with the ordinary constitution of human nature, that on the occasion of any such professions, no man can produce any just claim to general credence.

That which, in the situation in question, any man may, with reason, be considered as more or less sensible to—is any inconvenience to himself that may happen to present itself to him, as likely to be among the effects of the tax: the inconvenience, for example, producible by any opposition that may seem likely to be made, by any persons who consider themselves as likely to be in any way sufferers by it: to which, of course, will be to be added, if it be not implied, the inconvenience liable to be produced without doors, as well as within doors, by all parties out of place.

This is the evil by which the impression, if any, made on the mind of the financier, will, in reality, be produced: the evil, to the contemplation of which that impression will, of course, be avoided by him, is the evil seen, or apprehended to be produced in the breasts of the contributors and other sufferers.

So this as it may, what in every state ought to be expected, is, in the first place, that among the existing sorts of taxes there should be different degrees of mischievousness: in the next place, that the degrees of mischievousness should not exactly follow the chronological order of the taxes. To the perfection of appropriate intellectual aptitude on the part of the financier, suppose the perfection of appropriate probity added, the degree of mischievousness will on this supposition be in the inverse ratio of the chronological order of the deleterious sorts of taxes, as first in time, will come the least mischievous, last in time, the most mischievous.

Compare now the number of the waste with the number of the tax.

To obtain an adequate conception of the quantity of evil produced by a quantity of waste in a given instance, find and compare with it, the quantity of evil produced by the levying of a certain proportionate and equal portion of the most mischievous of the existing taxes. For, on condition of abstaining from the commission of the waste, you may relieve the people from the burthen of that portion of the produce of the tax—you may abolish so much of the tax.

Note that, to render this rule strictly conformable to the truth, the quantity of waste abstained from, must be equal to the whole amount of the tax; for, in the case of a tax, there will always be a portion of evil, the quantity of which, will be the same, be the produce ever so great or ever so small. For example, a certain portion of the expense attached to the official establishment employed in the collection of it.

By the above general observations, the reader will now have been in some sort prepared for the forming a just estimate of the evil produced in the shape of waste, by various branches of customary expenditure, hitherto very commonly regarded as justifiable, either on the ground of absolute necessity, or, at any rate, on the ground of utility. Take, for example, the splendour of the crown, the support of the dignity of the peerage,—jobs for the enrichment of the ruling or influential few, and jobs for the amusement of the ruling and influential few.

CHAPTER VII.

PRESCRIPTIONS OR BEARINGS OF THE OTHER CODES OR BRANCHES OF LAW, TO THE CONSTITUTIONAL CODE.

Section I.

Civil Law.

Not only the comfort of the individuals, but the security of the whole community requires that, as well against the calamity of famine as against external hostility, individuals should be protected; the treasure of the comparatively opulent, is an insurance office to the comparatively indigent.

But forasmuch as it is only in a minute ratio that increase of happiness is concomitant with the increase of the external means of happiness, the principle of equality requires that so far as may be, without taking away the inducement to productive industry and frugality, the opulent few should be prevented from doing injury to the indigent many, by means of the power necessarily and proportionably attached to opulence: and that so often as this can be done, without the production of the sensation of loss, opportunity should be taken of breaking down large masses into smaller ones.

Hence it is that, on the death of the proprieprietor, provision is made in the civil or distributive branch of the law, to prevent it from falling entire into the lap of any single individual, in a family of brothers and sisters, to the exclusion, total or partial, of the rest.

Another instance in which the matter of the Civil Code belongs in spirit to the Constitutional Code, is—that of the sort of institution already spoken of, called a Foundation. Foun-

dation is another name for legislation. Under the name of a founder, a man (if permitted by the legislator) may exercise those same powers in a manner not less effectual, though neither declared nor open, nor by many an eye observed.

The legislator recognised as such, has equally at his command two instruments—punishment and reward,—each of which, or both, as in his eyes occasion requires, he employs in the performance of his work. Of these two instruments, openly and immediately the founder employs but one, viz. reward: but immediately, and to many an eye secretly, he employs the other likewise. For in truth, such is the connexion between those two instruments, that he who has either at his command, has at his command the other likewise: each of them is in effect contained within the other. Subtraction of reward is punishment; subtraction of punishment is reward.

Under a weak and purblind legislator, a foundation is an instrument with which the crafty individual may undermine the power of the legislator and set up his own in the room of it.

Under a crafty legislator, a founder with his foundation, may be an instrument with which, without being seen to be engaged in it, the legislator may give advancement to his own private, at the expense of the public, interest. He may thus at once demoralise and disintellectualize the great body of the people over whom he rules.

Take the following example: and in this one example behold how thin and indeterminate are the divisions by which the abuse and the use are separated.

First take a foundation having for its object the diffusion and advancement of this or that branch of art and science; or in a word, of all branches taken together. What can be more innoxious? What can be more manifestly useful and proportionably laudable?

All this while, whether it shall be useful or in the highest degree noxious, depends upon a difference, to many an eye so slight as to be imperceptible, in the mode of teaching to which the mass of reward, which the foundation has for its instrument, is annexed.

Leave the whole field open to inquiry, unreserved and unfettered inquiry,—useful or useless, everything that is done and said is at any rate innoxious: for if from one mouth noxious matter issues, from another comes medicinal matter, which neutralises it and destroys its effect.

But, be the portion of the field what it may—on that portion be the question what it may—let the supposed service be, giving support to one side of that question, to the exclusion of the other—now it is that the reward becomes poison. To gain it, he whose real opinion is on one side of the question pretends it to be on the other; and employs his endeavours in inculcating it as if it were his own. Here, then, if insincerity be immorality, already behold the moral poison. But to no man is the idea of his own immorality a pleasant one. Feeling it an unpleasant one, his endeavours will be naturally and constantly at work in ridding him of it. For this purpose, nature affords, and on every occasion presents, an appropriate process. It may be styled the self-deceptive process. The receipt is this. Be the subject what it may, be the question what it may, be the side of the question what it may, that you have pretended to espouse, direct your attention to the arguments in favour of that side, keeping it turned with inflexible perseverance against all arguments in favour of the opposite side.

If your understanding is not more or less above the level of that of the ordinary run of men—if at the same time the reward with the punishment included in it, is strong enough to give to your attention the requisite fixity, sooner or later, the opinion, howsoever at one time scorned by you, becomes yours.

Were the treasures of both the Indies exhausted for the purpose in the offer of a reward, support could not be purchased for an opinion more palpably and flagrantly absurd than those are, which minds in countless millions have actually been made to fold in their embrace.

Introduce religion, and with her, in addition to insincerity, comes cruelty, or in the words ascribed to her, hatred, malice, and all uncharitableness. To cause men to teach some absurdity or other, treasures, up to the value of whole kingdoms, have been employed. To cause men to force themselves into the belief of it,—or rather, for that can scarcely be said to be possible, to keep out of their minds the disbelief of it,—eternal torments, *i. e.* the fear of them, has been, and continues to be employed. But, proportioned to the difficulty of keeping out this unbelief, and thereby of purchasing a supposed security against these torments, will be the uneasiness experienced by the miserable patient, as often as any consideration tending to produce such disbelief is presented to his view. Proportioned to this uneasiness, will of course, be the anger excited in his mind, the anger of which any man who has contributed to the production of this uneasiness, will be the object. This anger, there are two classes of persons by whom it will be shared: the hypocritical knave by whom, with the full consciousness of its absurdity, the dogma has been inculcated, and the miserable dupe by whom, for want of courage to open his eyes to the absurdity, it has been embraced.

Now then comes the cruelty. The more flagrant the absurdity, the greater the difficulty of causing men either to embrace the dogma or to pretend to embrace it. The greater the difficulty, the greater moreover the anxiety of the tyrant, by whom the command to profess the belief of it, has been issued, lest universal indignation, with its consequences, should take place of the universal prostration of understanding and will, the

production of which he has thus hazarded himself to endeavour at. To quiet this anxiety, to satiate this anger, if moderate punishment is not sufficient, immoderate must be employed: and thus in Spain and Portugal, have come those temporal and visible burnings, forerunners and prototypes of the announced immediately future, though as yet invisible, ones. Such are the scenes which in Spain and Portugal, the hypocrites and their dupes have witnessed and enjoyed: such are the scenes which, in England hypocrites and their dupes (unless in England, man is an altogether different animal from what he is in Spain and Portugal) have never ceased, nor as long as man is man, can ever cease, to wish to witness and to enjoy;—to enjoy in that same land which, two centuries and a half ago, presented these same scenes to the wisdom and piety of their ancestors.

Section II.

Penal Law.

To the vocabulary of tyranny belongs the word *mercy*. The idea expressed by this word is a sort of appendage to, and antagonizes with, the idea designated by the word justice.

The word *justice*, as but too commonly employed, matches with the word *deserved*, as applied to punishment. In this sense, penal justice is exercised by the application of punishment on the occasion on which, and in the quantity in which, it is deserved. In this case, if mercy be exercised, it is in opposition to, and at the expense of, justice: in so far as mercy is exercised, justice is not done. What in this, as in every case, the greatest happiness of the greatest number requires, is—that if, on the occasion in question, the application of the punishment in question would be conducive to that happiness, the punishment should be applied; if not, not: if, in either case justice is administered, no such thing as mercy is exercised in either case. Under a government which has, for its actual end, the greatest happiness of the greatest number, thus it is that mercy is unknown. Mercy unknown—and why? Only because tyranny is unknown. Under a representative democracy—under the government of the Anglo-American United States, for instance—mercy is unknown, or at least might be so with great advantage, and therefore ought to be unknown. Under that government, for a functionary as such to stand up on any occasion, and say,—I will, on this occasion, show mercy, would be as much as to say—the power of a tyrant is in my hands, but on this occasion I will not exercise it. The surgeon, when it appears to him that it would be for the greatest happiness of the individual under his care that one of the patient's legs should be cut off, does he say—I will do justice upon this leg. As little, if it appears to him that, without cutting off the leg, a cure may be effected, does he say—I will show mercy to this leg.

It is for the accommodation of tyrants, and that they may receive tribute of praise, whichsoever course they take, in whichsoever shape they do mischief to the public, or in which way soever they afford gratification to their own passions and sinister interest.

If for the advancement of personal interest, or for the gratification of present passion at the expense of lasting personal interest, punishment is applied, *justice* is the word: if, for the advancement of personal interest in that same quarter, or for the gratification of this or that official servant, interfering gratuitously, or for a price, punishment is forborne to be applied, *mercy* is the word: in the one case, insult is offered to the public in one shape; in the other case, in the other. In the one case, it is on the score of wisdom that the praise so sure to be bestowed is bestowed—in the other case, on the score of humanity, benevolence, charity, clemency, what you please: clemency is a name given to supposed or alleged beneficence, when exercised by the exclusion of punishment, and seated on a throne.

The greater the aggregate quantity of punishment ordained by law, the greater is the quantity of mercy capable of being exercised by particular prerogative, in opposition to, and at the expense of, the general tenor of the law. Accordingly, where mercy is most heard of, be assured there is most tyranny. The making a ground for the exercising of tyranny under the mask of clemency, is one purpose for which punishment without limit or measure is anywhere by law established; the making a ground for the praise of benevolence, and thus providing malevolence and tyranny with a mask, is another purpose.

Under an absolute monarchy, malevolence, selfishness, tyranny, and thence punishment established by law, being unbounded, mercy is at times scattered with a proportionably lavish hand. When it has been the pleasure of the monarch to go through a matrimonial ceremony with a partner of the same class, punishments have been remitted by wholesale, gaols delivered at one stroke of the innocent and the guilty: criminality in all its shapes let loose, to recommence its ravages, and evil in all its shapes thus sown over the whole field of action.

When in the person of another alleged supporter to the throne, providence has been pleased to add another mouth to the mouths employed in devouring the produce toiled for, by labouring hands, here has been another occasion for the reproduction of evil in those same shapes.

Under a limited monarchy, the quantity of punishment capable of being applied, not being so completely unlimited, the quantity of mercy for which, with its due reproach and undue praise, there is room, is not quite so great. Room for it, however, always exists, and is always occupied in enormous superabundance. The unofficial intercessor is

mostly kept out, by the official arbiter, who, with the language and deportment of obsequiousness, on pretence of responsibility, dictates on each occasion to the vice-god, which of two courses his next to divine pleasure shall take.

In England, while men are condemned to death by hundreds,* death is inflicted on them by units: the difference between the unit and the hundred has for its cause the purposes above-mentioned.

In practice, the privilege of thus abandoning men to destruction, or saving them from it, at pleasure, is shared among functionaries in rank, office, number and proportion,—all indeterminate; or, at best, hidden from the eyes of all but the few who share among them a sinister interest, in the abuse of it: a judge or lawyer of one class or denomination on one occasion, of another on another. Along with, and above them all, stands the arch-functionary, who numbers among his titles that of keeper of the king's conscience: a man out of whose mind, by the indiscriminate defence of right and wrong, (with no other difference than the predilection naturally conceived, for the best customer,) everything that, in any other mind, has ever been designated by the name of conscience, has long before his taking that exalted conscience into his keeping, been obliterated.

Remission of punishment, yes: for that, there may be good reason on various occasions; but they are all of them capable of being, and all of them ought to be, specified.

In one word, mercy and justice are incompatible. In a government where there is room for mercy, it is because justice is overruled by cruelty. As mercy is a subject of praise, the more cruel the tyranny, the greater is the room made for praise.

A few words as to Conspiracy, Treason, and Libel.

Under a representative democracy, no place can conspiracy ever find for itself: for needless, and to this prefix or subjoin impossible,—such are the properties which it would find belonging to itself.

Impossible: for there is nobody to conspire against. Under a monarchy—under an absolute monarchy at least, there is a person to conspire against: there is the monarch: for if you get possession of his person, you may get possession of his power. Under a representative democracy there is no such person. For, by getting possession of the chief magistrate, you cannot get possession of an atom of his power.

In the import of the word conspiracy, where the act is treated on the footing of a crime, the idea of secrecy is included: to conspire, is to make mutual communication of opinions, desires, and eventually-intended endeavours, in secret. These desires and endeavours, if they bear any relation to the government, have, for their object, the bringing about some change in the government: which change, howsoever desirable in the eyes of those who thus project it, would not (so they are assured) be so in the eyes of the existing rulers;—for, on the supposition of its being so, the secrecy has no use. In an absolute monarchy, no change presented by any pair of hands more than one, can be agreeable in the eyes of the monarch or of any under him. If in itself it be agreeable to them, and it had not of itself presented itself to any of them, they may vouchsafe acceptance to it, if presented to them by no more than a single pair of hands, and in a cringing attitude: yes, and even if presented by any such hands, after conference on the subject between two or more persons in an erect posture. But in this case, while they are availing themselves of the plan, they will punish the authors as being conspirators.

Under an absolute monarchy, any discourse of a nature otherwise than agreeable to the monarch, (or any of those by whom execution and effect is given to his will,) is, if uttered by word of mouth in the hearing of any other person, a seditious discourse; if committed to print or writing, a seditious libel; such of course is the character of every discourse by which intimation is given, that in this or that particular, still more if in general, the system pursued, or the conduct of those who act under it, might if different from what it is, be better than what it is,

Under a limited monarchy, the case is, in these respects, the same.

Under a representative democracy, suppose conspiracy not impossible—suppose it not groundless—still there could be no need of it. Under a representative democracy, individuals in any numbers, may, in any places, at any time, meet, and say, and hear, whatsoever (whether in relation to the system pursued, or in relation to the conduct of those who act under it) is agreeable to the respective speakers; to whatsoever degree it may be otherwise than agreeable to the hearers, or to their common rulers. Be the purport of what is thus said what it may, the speaking of it will not be seditious speaking: written or printed, unpublished or published, a paper in which it is contained will not be a seditious libel. Suppose a proposition made for killing, or beating a judge, a governor, a president: for pulling down or plundering his house, a proposition to any such effect, if followed by any correspondent endeavour, will be an offence against person or property, as the case may be, and punishable as such: for a judge, a governor, a president, is an individual. But in neither case would it be either treason, or say, lese majesty, divine or human, or so much as sedition: at any rate, if by the legislature of any such state, the judge was suffered to

* The punishment of death has been very considerably diminished since the year 1822, when the above was written.—*Ed.*

punish it as such, it would be in humble imitation of an original, by the imitation of which on any one occasion, they ought to be covered with shame.

Under the general government of the Anglo-American United States, there is no such thing as a seditious libel. Charge the president of congress, charge the vice-president, charge the chief justice with having taken a bribe—do this in print, circulate the print all over the United States, no one of them will cause you to be punished as for a seditious libel, no one of them will have it in his power so to do: for no such injury will any criminal prosecution lie: no information granted, *ex-officio*, without motion: no information granted on motion: no, nor so much as any indictment. Action civil, *i. e.* non-penal, yes, viz. as for defamation. Prove thereupon, the imputation to be well grounded, in a man on whom it has been cast, and he will be punished accordingly: though such is the effect of blind obsequiousness to a corrupt original, be the evidence ever so complete, it will have to be delivered over againin a needless and worse than useless prosecution, required by lawyer-craft for the purpose.

If you fail in the proof, you may be punished for the injury, by being obliged to pay money on that account to the individual injured: and it is right you should be so, if you had not before you a reasonable ground for believing the imputation: much more, if you are conscious of the falsity of it. In this there would be nothing but what is right: for though he is neither a vice-god, nor a magnate, the person in question is an individual, and an individual whom you have injured.

Under a representative democracy, though there can be no lese majesty, divine or human, nor anything of that stamp, there may be hostility: for there may be disagreement; disagreement by men in any numbers on two opposite sides: and how improbable soever, such disagreement may rise to hostility. Here then is war: and this war a civil war. It will be carried on as in the case of ordinary war, carried on between civilized nations: it will be carried on, by each in such a manner, as shall present to its view the fairest promise for the attainment of its end, with the least damage,—in the first place to itself, in the next place to the enemy. Some will accordingly, on the losing side at least, be killed, others wounded, others in the situation of prisoners, left at the disposal of the commander of the victorious army.

Having them at his disposal, how will he deal with them? Does he put them to death in cold blood, with a gang of lawyers to give form and colour to his cruelty? Will he, with any such gang for his prompters, tell them that their blood is corrupt, and that on that account it was just and necessary that their wives and children should be destitute of subsistence, and in that state kept by law, as far as practicable till they die? No: he will do nothing of all these things: the men he will keep to the best of his power; their arms he will as soon as possible take into his custody, lest they should turn them against him and his. But sooner or later hostility will give place to peace. On that joyful occasion these captives will, the whole remainder of them, be sent back to their homes and families, bodies fed, wounds healed, ignominy in no shape, either cast upon them, or endeavoured to be cast. Whence all these differences? Answer: On neither side has any vice-god been seen or fancied: and on neither side has any such word as legitimacy been pronounced.

In so far, then, as it matches with, and is determined by, the state of the constitutional branch of law, the state of the penal branch of law will, under the different forms of government, present the different aspects following:

Conscious, more or less, of the opposition that has place between their own particular interests and the greatest happiness of the greatest number: alive, at the same time, to a sense of the dangers that attach upon the situation, from which they derive that sinister interest;—haunted, not merely by a correct and adequate, but by an exaggerated image of those dangers,—under monarchy, whether absolute or limited, under aristocracy, under every form of government but representative democracy,—never, in the imagination of the ruling one, of the subruling or the influential few, can the mass of securities in which they intrench themselves be sufficient: in that part of the intrenchment which is the work of penal law, death, substituted to punishment in any less odious and more appropriate form; torture, antecedent and concomitant, added to simple destruction of life; punishment of the acknowledged innocent, added to that of the reputed guilty; confiscation; under pretence of corruption of blood, interception of inheritance; for that, and other purposes, pains of hell in prospect, under the sad necessity of not being able to apply them in present reality, and existence;—all these penal securities, put together, are insufficient to produce that inward tranquillity which conscience keeps for ever banished from those misery-bound, and misery-producing situations. Hence it is, that every act which, in those distempered imaginations, threatens to substitute to the superlatively mischievous form of government, in which they behold the source of their sinister benefits, a form in any degree less mischievous,—is, by that same distempered imagination, elevated to a rank towering above the most mischievous of those offences, by which real mischief is produced.

Treasons—political offences—state offences—offences against government, are the denominations by which acts bearing this character are, in these days, commonly designated; lese majesty divine and human, is of the number of the denominations by which, in former days,

offences of this same description were, by the wisdom of the ancestors of those who number ancestry among their possessions, denominated and distinguished. Of lese majesty a division was made, but with little difference, between its parts, and between that which was human and that which was divine: lese majesty *human*, an offence against the power, crown, dignity, and majesty of that but too visible god, whose throne was upon earth: lese majesty *divine*, an offence against the power, crown, dignity and majesty of the invisible God, whose throne is in heaven.

The authors, printers, publishers, circulators, lenders, borrowers, hirers, readers, hearers—if not denunciators, of libellous discourses,—all discourses either actually displeasing to the monarch, or any of his chosen servants, have always been punished by halter, ball, bayonet, or imprisonment.

Under a representative democracy, scarcely, for offences of this class, it has been seen, can so much as a place be found. On the one hand, stand offences of individuals against individuals: on the other hand, acts of hostility by enemies against enemies. Rulers being individuals—rulers and subjects at the same time,—for person, reputation, property, and condition in life, rulers receive the same protection as subjects, and of no other protection have they, or can they conceive themselves to have, any need. Under a monarchy, by sudden death inflicted upon the chief of the government, changes, to the importance of which no limit can be assigned, may be produced. By an operation, to the same effect, upon the person of a chief magistrate, in a representative democracy, no such effect—scarce any such effect as would in any sinister estimate be worth producing, would ever be produced: another as good as he, and no better, (nor of any better would there be any need,) would, as soon as the election had run its course, step into his place.

In a monarchy, especially if absolute, take possession of the chief magistrate, you take possession of an immense part, if not the whole, of the power which is in his hands. He signs what laws and orders you give him to sign, he utters whatever speeches you give him to utter, he takes whatever oaths you give him to take: reserving to the first moment, after he is out of your hands, the signing of repealing-laws and counter-orders, the utterance of counter-speeches, the declaration that the former oaths were null and void, and the taking of as many counter-oaths, if any, as shall, in his eyes, afford a promise of being contributory to the purpose of the moment, whatsoever that purpose be.

Whatever course of conduct he has ever given a promise to pursue, with this ceremony, or sanction to the promise; if at any moment being called upon to pursue a different course, it be more agreeable to him to persevere in the original course, he will assure you that oaths, all oaths, are things sacred and inviolable. If, at the moment in question, it be more agreeable to him to violate the oath, than to keep it; he will take a distinction: all proper oaths, he will assure you, are sacred and inviolable, and, as such, ought to be fulfilled: all improper oaths are, in their own nature, null and void, and, as such, ought not to be fulfilled.

Make your way into the capital some dark night, steal into the president's bed-chamber, through one of the windows, drag him out through it, and convey him into the hut, or boat, you have provided for the purpose, then see what you can make of him: what power you can get possession of by this exploit: what money, what arsenals, what fortresses you can get possession of: what change you can, by this means, make in the constitution. But no: whoever you are, you will do no such thing: if you are a thief, you will ransack his pockets—the man you will not meddle with, for no use whatever could you make of him.

Under a monarchy, accept the invitation of the wife of the chief magistrate, you beget a future possessor of the throne, taking your chance for keeping your head or losing it: in a representative democracy, accept the like invitation from the wife of a chief magistrate, you beget a future possessor of a farm or a counting-house: your head is not in danger; your purse is, or is not, according to circumstances.

The imputation of moral depravity does not necessarily attach, upon any endeavour, to subvert the constitution, or to oppose the power of any individual functionary or functionaries, although it be by force. No such endeavour can be used with any chance of success, unless in the opinion of a considerable portion of the members of the community, such success would be acceptable to the whole, as contributing to the greatest happiness of the greatest number.

The government of the state will, of course, defend itself against all such as in its eyes are domestic adversaries, as well as against those who, in its eyes, are foreign adversaries.

If, in the course of any such endeavour, injury be done to person, property, reputation, or condition in life, those who have been concerned in doing it, will in this, as in any other case, be exposed to the burthen of compensation, together with whatsoever further burthen has been provided, on the score of punishment: if no such injury has ensued, there can be no need of any specific infliction in the name of punishment: the notoriety of the endeavour, coupled with the notoriety of the ill-success, will itself have the effect of punishment.

For the endeavour to give aid to a foreign enemy, to the detriment of the state, the penal consequences say, shall or may be as follows, namely:—

Personal exposure, with appropriate inscription,—banishment or confiscation.

The mode of personal exposure may be as follows:—

The patient to be placed in an elevated situation, in the middle of some open space, sitting in a chair, and confined thereto, with his hands tied behind him, so as to prevent his employing them in concealing his face: the chair turning on a pivot in such sort, that by four periodical movements, his countenance may be presented to the view of all the spectators in the surrounding circle: a covering of iron, in the manner of a bird-cage, to protect him from corporeal injury by missiles from the crowd.

Banishment for any term, not exceeding a year, with imprisonment in such sort as shall be necessary for carrying the banishment into effect: the banishment, at any time before expiration, renewable for the same or any less time, by a fresh order, issued without fresh trial by the minister of justice, notified in the government newspaper: and so for any successive number of times.

Confiscation of property, total or partial: temporary, but renewable as above.

Such confiscation has not for its object anything more than the preventing the patient from employing his property to the detriment of the state. It is not, therefore, meant to be taken without reservation made for his use, of an income sufficient for the bare subsistence, at least of himself, and otherwise destitute wife and children.

Section III.

Procedure Law.

The expense, vexation, and delay incident to judicial procedure, fall most heavily on those by whom they can least be endured, viz. the greatest number: these burthens have hitherto, by official and professional lawyers, under the sanction of the legislative authority, been maximized.

Of those by whose labours the matter of abundance is furnished to the rest, by far the greater number are everywhere so circumstanced as to have no money at all to spare for any such afflictive casualties. In the case of an individual of this class, whether it be in the shape of money or of time, any the slightest addition to such expense of time and money as the nature of the case renders absolutely unavoidable, operates as a denial of justice. It exposes every individual by whom such expense cannot be sustained, to suffer oppression to an unlimited amount, at the hands of every individual by whom such expense can be sustained. It operates as a bounty upon oppression, and as an instrument in the hand of the oppressor in every case in which the power of the judicial authority is among the instruments by which the oppression is exercised.

On this account it is that the following arrangements are of such indispensable importance. Judicatories to be near each man's house, and thence correspondently numerous. Judicatories to be paid by government, out of the common fund, and not by the individual suitors,—individuals by whom, so far from greater benefit, less benefit is reaped from the services of the judge, than is reaped by non-litigants; because that protection and that security which litigants do not obtain, non-litigants do obtain without expense to themselves.

Judicatories never to be in a state of inaction, so long as there is any business to be done.

The sort of causes which ought to have the precedence in the attention of the legislator, will be those in which the greatest number are in one way or other concerned; and among them, those which are of the most frequent occurrence. These, in the eye of the Legislator for mankind, will be the most important causes. In a code which has for its object the greatest happiness of the ruling few, in particular of the ruling one, this order will, of course, be reversed.

Section IV.

Financial Law.

Conformably to the principles of this code, no tax can be imposed for any of the purposes following:—

Augmentation of the collective splendour of the state, or of its functionaries collectively.

Augmentation of the splendour of any one functionary in particular.

Advancement of purely agreeable or curious branches of art and science.

Expenditure of money derived from any other source, is the same thing in effect, with a tax to that same amount.

Section V.

Military Law.

For obtaining equal security, it is requisite that the military means of self-defence, be spread all over the territory, and all over the population, with as much equality as possible.

That, accordingly, skill in the use of arms, and (as the means and instrument of it) the being instructed and exercised in that use, be with that same degree of equality, universally diffused.

For eventual defence against external enemies, it will or may be necessary, that at all times, a body of men, more or less considerable, be kept up, in whose instance military exercises will occupy the whole of their time. The effective force of this constantly trained and exercised class will, therefore, be of necessity, considerably greater (numbers being equal) than that of the less frequently exercised class. In the hands of a mischievously ambitious commander, this regular force might be dangerous to the independence of the rest of the community, if the inferiority which has place in the article of skill, were not decidedly more than countervailed by superiority in the article of number, on the part of that less perfectly exercised body, who compose so very

large a portion of the whole population, and whose interest is nearly identified with that of the whole.

Moreover, as the members of the imperfectly-trained force, will maintain themselves, while those of the perfectly-trained force, must be maintained at the expense of the rest of the community; economy joins with political security, in prescribing the confining the perfectly-trained force within its narrowest limits.

Hence came two correspondent subordinate objects or ends in view, expressible in these words: militia force, maximized: regular force, minimized.

CHAPTER VIII.

PUBLIC-OPINION TRIBUNAL.

In the designation of this species of unofficial judicatory, the appellation Public-opinion Tribunal is here employed, in conformity to, and compliance with, universal usage. By the word opinion, however, an erroneous conception is liable and apt to be conveyed and produced, namely, that it is by mere opinion—by the mere exercise of the judicial faculty, that those effects, which, on the actions of other persons are so manifest, and so universally acknowledged, are produced. This conception is, however, an erroneous one; for it is only by a sense of interest, by the eventual expectation of pain or pleasure, that human conduct can, in any case, be influenced: if it is by any opinion, supposed to be formed by other men, that a man's conduct is in any way, and in any degree, influenced, it can only be through the medium of expected action, and thence of correspondent will, on the part of the individuals in question, that the influence can be produced: the expectation that, by the opinion, favourable or unfavourable, correspondent *will*, will be produced, and by correspondent will, correspondent action, in the shape of good or evil offices; and by such good or evil offices on the one part, pleasure or pain on the other.

The members of the public-opinion tribunal in a community, are the members of that same community, the whole number of them, considered in respect of their capacity of taking cognizance of each other's conduct, sitting in judgment on it, and causing their judgments in the several cases to be made known. In the English House of Commons, in the formation of a committee of the members for this or that particular purpose, an order that now and then is seen to have place is, that all who come to the committee, shall have voices. The members of the public-opinion tribunal, are to the members of the community at large, what the members of the House of Commons' committee thus formed, are to the members of the house.

The public-opinion tribunal may be conceived as sitting and acting in full assembly, or through the medium of a committee, a specially and actually appointed committee.

In the character of a full assembly, whatsoever is said of it, may contain more or less of truth, but must unavoidably be mixed with more or less of fiction. The best course, therefore, will be to consider it as acting by a committee: in this case, all fiction may be excluded. That which is real, being thus explained, the explanation may afterwards be applied with advantage, to the mixture of the real and the fictitious.

As this tribunal, by the counterforce, which, by its punitive power, it applies to the power of government, contributes to keep it in check, and keep its course within the paths indicated by the greatest happiness principle, (thereby operating as a security for appropriate moral aptitude in the conduct of rulers as such,) so may it, in no inconsiderable degree, by its remunerating power.

There are two distinguishable forms in which influence, more or less effective, may be given to the will and understanding of the great body of the people: in one form, their opinion—that is, the opinion of such of those whose opinion can be brought to bear upon the subject in question—is accompanied with a will, clothed with power; in the other form, whatsoever effect is given to what passes in their minds, it is by the declaration of their opinion alone that the effect is produced. In the one case, of any declaration of their opinion, *obligatory* effects are made to follow it; in the other case, no such effects are made to follow it.

Of the case in which its opinion receives an obligatory effect, the function of a jury is an example. A jury, in so far as it is what it professes to be, is a sort of committee of the whole body of the people,—a section of that vast polypus. The decision or verdict of the jury is productive of an obligatory effect, *i. e.* it determines the fate of the cause. Say, public-opinion tribunal, adopted into, and constituting a constituent part of the legal tribunal.

The case in which the opinion has no obligatory effect would have place, on the supposition, that the verdict of the jury, though pronounced in the same manner as in the former case, would not be obligatory upon the judge, but would leave him at liberty either to give effect to it, or to give effect to a decision of his own framing, howsoever different from it, or even directly repugnant to it. Say, public-opinion tribunal, delivering verdicts, but those verdicts not obligatory.

A third mode would have place, if a certain number of men, in the character of a section of the public-opinion tribunal, stood engaged to be present during this or that part, or during the whole progression of a cause or suit; but without either obligation or power, or, at any rate, without obligation to deliver any conjunct portion of discourse in the character of a verdict. Say, a silent jury.

In the second mode, the effect produced on the mind of the judge, by the counterforce thus applied, would be produced by what they were *known* by him to think: in this third case, by what they were *supposed* by him to think.

These judges, by whom every person and everything are to be judged, who, it may be said, are they? Who but the members of that body, the vast majority of whom are, and always will be, in all places, and at all times, the comparatively ignorant and weak judgmented: and is it by these least informed, that all better qualified judgments are expected to be influenced and guided?

Answer: It is not from any particular judgment, ascertained to be on any occasion actually delivered by them, that the good here looked to, is expected. What is not proposed is, that the votes of any of them, shall on any particular question, be collected: on no other occasion than that of an election of deputies will that be done, in regular course. It is from the opinion expected to be on each occasion inwardly entertained by them, that the good is looked for. It is not from anything expected to be said, only from what it is expected will be thought, that the benefit is expected. Included in this aggregate judgment, are the judgments of the most unapt, as well as those of the most apt.

By a functionary, especially if acting singly, as often as any act of misconduct is committed, the consequence of it, sooner or later, or at any rate the tendency of it, will be to produce, in some shape or other, evil, that by individuals in a number more or less considerable, will be felt: in a word, suffering in some shape or other on the part of these same individuals. To all, by whom any such suffering is experienced, will at any rate be known, that they do experience it: and among those who experience, added to those who witness those same sufferings, there will always be some, who being qualified to trace them to that misconduct in which, as above, they have their source, will naturally be disposed to make communication of such their discoveries to the rest. As to the opinions by which, in each case, the cause of the suffering is undertaken to be assigned, they will commonly be, many of them wrong, but on each occasion, they may be, for aught that the rulers can know, in any number, right: and it is by the fear of the conduct that may be the result of these opinions, that the check which applies itself to the conduct of the ruling few, is applied, and the corresponding benefit produced.

In his quality of member of the public-opinion tribunal, every member of the constitutive body in giving expression to a sentiment of disapprobation so grounded, exercises a judicial function: any such expression, if made in the hearing of others, may be considered as a motion made for censure on the conduct of the functionary in question: if by any author of such virtual motion, in consideration of such supposed delinquency, a vote be given at any election, in disfavour of such functionary, the part acted by such vote may be considered as an act done for the purpose of giving execution and effect to the condemnatory judgment, so formed as above. On the occasion of an ordinary suit between individual and individual, or between government and individual, any such union of the functions of accuser, judge and executioner, would be incompatible with justice: but in the case here in question, all that it amounts to is this, namely, that for his guidance in the exercise of his share of constitutive power—the giving of his vote—the individual takes the only course which the nature of the case admits of.

The following may be employed amongst other means of bringing the force of the popular or moral sanction to bear with greatest advantage upon the conduct of public functionaries in the several departments:—

In every apartment in which a public functionary sits to do business, keep in view of the public, a table in placard form, containing admonitory rules, and notices, having for their object the prevention of the moral failings, to which by his situation, the functionary is most exposed. To these admonitory rules and notices, the distinction between universally-applying and particularly-applying, will be found applicable.

I. Notices.

1. Name of the edifice, over every door that opens into, or is visible from, the public highway.

2. In each edifice, over each door of each chamber, the name of the chamber.

3. In each chamber, over the seat occupied by each functionary, the name of the office, and the proper name of the functionary who sits in it.

4. In each chamber, over the door, designation of the hour at which the functionary ought to take his seat, and of the hour at which he is at liberty to desist from the exercise of his office.

5. So, an almanac, marking the months, weeks and days of the attendance in each year.

II. Admonitory rules.

1. Admonitory rules of general applicability, expressive of the duties of the functionary.

2. Admonitory rules of general applicability, expressive of the duties of persons attending at the office as having business therein.

3. Admonitory rules of general applicability, expressive of the powers given to the functionaries in question, for preventing interruption of the business of the office, and annoyance of them in the exercise of their functions.

Rule of general applicability, expressive of

the duty of the functionary. Duty of urbanity: abstinence from the insolence of office.

(1.) In this office, let the functionary consider, that it becomes him not, in quality of his office, to assume any superiority over any person having business therein: that, in his quality of public functionary, his situation with reference to every such person, is rather that of a servant than that of a master, he being remunerated at the public expense for the rendering of such services as appertain to the nature of his office.

(2.) If in his dealings with any suitor to the office, any expression which by such suitor is regarded as an expression of contumely, ill-humour, or undue impatience or contempt, be uttered by the functionary, the suitor, may, if he pleases, upon the spot, commit the same to paper, and require of the functionary under his signature to avow or deny the having employed it. If the functionary refuse, a memorandum may be made of such refusal, in order to form the groundwork of an accusation before a judicatory.

Of the powers given to the public functionary, the sole object is, the enabling him to fulfil his duties: to render to the public, the services for the rendering of which the office has been instituted. The institution of it, has not among its objects, the affording gratification to the vanity, much less to the pride, of the functionary, at the expense of the feelings of those who have business to do at his office.

Of these admonitory rules, the use is, to apply the force of the moral sanction, in cases when, by reason of the overweening power of the functionary, or in case of transgression the impossibility or difficulty of obtaining adequate evidence, the force of the political sanction is not sufficiently applicable.

A solemn engagement, in which either the rules themselves or the substance of them is repeated, should be pronounced by the functionary in the face of the public, upon his entrance into office. It might, if worth while, be repeated periodically: for example, in case of a new constitution, on the anniversary of the celebration of the constitution.

For what purpose professedly employ and seek to increase the power of this unofficial judicatory?

Answer: To a representative democracy, this unofficial, unpaid, and incorruptible judicatory, is an instrument of support: and in regard to it, the object and endeavour will be, to maximize the rectitude of the decisions given by it, in the several instances; and in so far as that rectitude has place, the force with which it operates.

To every other form of government, it is by correspondent causes rendered an object of terror and anxiety: though the magnitude of its power is universally acknowledged among them. In proportion, however, to the magnitude of the force attributed to it, is the endeavour to oppose whatsoever is salutary in its influence: that is to say, either to give to it a sinister direction, by the united power of force, intimidation, corruption, and delusion; or, in so far as the giving to it any such sinister direction is regarded as impracticable, to exclude from its cognizance every topic that presents itself as bearing any relation to politics, morals, or religion.

The tribunal of public opinion may be considered as composed of two sections: the democratical and the aristocratical. On every occasion, the conduct of every human being will be determined by his own interest, taken in its most extensive sense: that is, his own interest, according to his own conception of it, correct or incorrect, in relation to it at the moment of action. On every occasion, the opinion *acted upon* by each individual, in his character of member of the public-opinion tribunal, will therefore be determined by his own interest: so therefore will that of the whole tribunal, considered as a whole, be determined by the interest of the majority of those who act as members.

The interest of the democratical section, is that of the majority of the members of the whole tribunal taken in the aggregate: it is consequently the interest of the subject many: the opinion on which it *acts* will be that which is in the highest degree contributory to the greatest happiness of the greatest number, in so far as the conception entertained by the several members in relation to their respective interests is correct.

The interest of the aristocratical section of the public-opinion tribunal, is that of the members, or the majority of the members, of that portion of the entire number of the members of the political community, which is composed of the ruling and otherwise influential few: of the highest rank of the functionaries of the state, with the addition of such other classes, whose particular interests are in league with theirs. The opinion on which, as in their several other characters, so in this, they will act, will therefore, in each instance, be determined by the interest common to the members of this section. But in a great, not to say the greatest, part of the field of morals, including that of legislation, the interest common to the members of this narrow section is in direct opposition to the interest of the other more comprehensive section.

The democratical section, or the section of the subject many, is composed chiefly of the productive classes, including under that denomination, those occupied in giving facility to the distribution of the good things produced: without which distribution, production would not be of any use. The section of the ruling and otherwise influential few, is composed principally of the non-productive classes.

Corresponding to the deviation in regard to interest, will be the several opinions pronounced and acted upon by these two sections.

By the democratical section, disrepute, or say disapprobation, will be attached to all such actions, as, in the conception of its members, are detrimental to the universal interest: and that in a degree of force proportioned to the degree of the injuriousness: approbation to all such actions as, in the same conception, are in an eminent degree contributory to the universal interest.

The aristocratical section will be determined by the respective opposite interests, in the disposal of such expression of disapprobation and approbation as it is respectively in their power to make with regard to human conduct, in every part of the field of law and morals.

By approbation and disapprobation understand, in both cases, that which is *expressed* and otherwise *acted* upon: immaterial taken by itself, is any which is not expressed or acted upon.

Of this aristocratical section, there is commonly a sub-section, by whom, in appearance, opposition to the work of corruption will naturally be maintained. This sub-section is composed of such of those corruptionists, who, being such in desire and expectation only, without being in connexion with those in possession, will in this way, as in all others, be making war with them, which they can no otherwise do than by accusing them at the bar of the public-opinion tribunal, and using their endeavours to draw down upon them the discontent and resentment of the people. But in no such apparent endeavour have they ever, or can they ever, in the nature of the case, be sincere, as has been fully explained elsewhere.*

Unhappily for the members of the democratical section, their conceptions, their judgments, their suffrages, their language, have till this time been placed almost completely under the guidance, and almost, as it were, at the disposal of, those of the aristocratical: and thus it is, that by the sinister interest of these their adversaries, not only have they been placed and kept under the yoke of misrule, but the only instrument in which they could seek relief from the disorder of misrule, has been employed, in a great degree, in the aggravation of it, and in keeping them, as far as may be, from all thoughts of applying a remedy.

Offences against the person, property, reputation, and condition in life, including power, of individuals,—under these denominations may be included all modifications of conduct detrimental to the happiness of individuals, individually considered, and this whether opposed or not by the power of the political, including the legal sanction. It is the interest of a member of the democratical section, as such, that no such misdeeds as come under any of these denominations should have place in any instance.

With respect to the aggregate mass of these same misdeeds, it is the interest of a member of the aristocratical section, as such, that no offence of any one of these descriptions should have place to the detriment of the happiness of that particular section to which he belongs. But, in so far as the effect of any such misdeed is to operate to his own benefit, though it be to the detriment of the more numerous class to which he does not belong, it is, in his view of the matter, generally speaking, his interest, that to the extent of that case, those misdeeds, in all their several shapes and denominations, should be as abundant as possible: that it should at all times be in his power to inflict on all the individuals belonging to the democratical section, evil in all those shapes, in so far as, by the infliction of it, gratification to himself, in some shape, shall thereby be produced.

It is his interest to have it in his power to beat, maim, or otherwise maltreat, for example, the person of every other man whose lot it has been to fall under his displeasure: to cover him with ignominy, on the supposition of his having committed misdeeds, which in truth he has not committed: to deprive him of any part, or of the whole, of his means of subsistence: to deprive him of the power of directing the conduct of his children during the time of their immaturity: by fraud or force to violate the person of his wife, his daughters, or sisters: all this without danger of suffering on his own part, on the ground of any of those misdeeds, at the hands of law or otherwise; on the contrary, to possess the assurance of seeing the force of the law employed in securing him against suffering in any shape, on the account of his having committed them.

A right of this sort—this right of doing wrong is, in so far as it is enjoyed by the members of a small class, at the charge of the aggregate of the members of the community, termed in the laws of all nations a privilege; in so far as it is possessed by a single individual, it is, in the language of English law, termed a prerogative.

It is the interest of every member of the aristocratical section, as such, that there should exist a class of citizens, provided he be one of them, in whose power it should be to enjoy benefits in all imaginable shapes, at the expense of the greater number.

If by any efficient cause, the members of the aristocratical section receive the power of producing, on the part of the members of the democratical section, suffering in all manner of shapes, for the gratification of their own appetites, while the members of the democratical section, as such, stand debarred from doing the like, to the injury of the members of the aristocratical, a natural consequence is, that the judgment entertained, as well as declared, on this subject, should, on the part of the members of the democratical section, be unfavourable and condemnatory with relation to this state of things, and so far to a govern-

* See Plan of Parliamentary Reform, and other Tracts, towards the end of vol. iii.

ment in which any such state of things is kept in existence.

But for the correspondent and opposite reason, a consequence equally natural is, that of the members of the aristocratical section, as such, the judgment pronounced on this same state of things should be favourable and commendatory.

What is the conclusion of all this? That in so far as it differs from the judgment pronounced by the democratical section, every judgment pronounced by the aristocratical section will be erroneous—erroneous, and to the prejudice of the greatest happiness of the greatest number.

From this it follows, again, that in every factitious assemblage of functionaries, instituted for the purpose of serving as a representation of the public-opinion tribunal, all individuals of whom it appears that they appertain to the aristocratical section, ought to be either excluded altogether, or if admitted, not admitted but in a number extremely small: admitted, not in the quality of voters, where votes would have an obligative effect, but only in the quality of advisers and instructors.

A jury may be considered as a section of the public-opinion tribunal, called in, on a certain occasion of judicature, to serve as a counterforce to the operation of particular and sinister interest in the situation of permanent judge.

In the practice of English law, there are two sorts of juries—the petty or common, and the special. The common jury is a committee of the democratical section; a special jury, of the aristocratical. The common jury is a safeguard against oppression: the special jury an instrument of oppression and injustice, fabricated by the corruptive system.

The judgment of the democratical section has many errors in it: it has some that are common to it and the aristocratical section: it has some which are peculiar to itself. But in proportion as it becomes more and more mature, it becomes more and more favourable to the universal interest; whereas the judgment of the aristocratical section becomes more and more adverse to the universal interest.

The members of the aristocratical section being as much members of the community as those of the democratical section, they have every one of them a vote in this tribunal. And this vote not only has a force and effect not less than that of a member of the democratical section, but a force and effect much greater, rising above it in a scale composed of numerous degrees of magnitude. Still, however, in proportion as the number of the members of the community at large, in the habit of acting in this character, increased, the ratio of the numbers in this more extended section, to the numbers in the more contracted section, would increase: and thus the members of the aristocratical section being constantly in a minority, the whole section would be without much or any influence. To preserve their influence, they, therefore, make common cause, secede from the democratical members, and sit in a section apart, forming as it were a house of lords—having an interest of its own, distinct from and opposite to, the interest of the remainder, and acting in pursuance of that particular and sinister interest.

If, in a *committee* of the public, the presence of a member of the aristocratical section of it can, with reference to the interest of the public taken in the aggregate, be of use, it can only be with a view to appropriate intellectual aptitude, knowledge and judgment taken together. In respect of moral aptitude, it can scarcely happen but that in comparison with an average number of the democratical section, he will be inferior: his situation exposing him to those temptations from particular and sinister interest to which the member of the democratical, as such, is not exposed. But whatever knowledge and judgment is possessed by a man, communication may as easily be given without a vote, as with a vote, possessed by that same individual. If, then, there be any preponderant demand for the assistance of a person of that class, with a view to accession of appropriate knowledge and judgment, a single individual of that class may be regarded as sufficient, whatsoever be the number of the remainder: in which case, his having or not having a vote in common with them will hardly be worth contending for.

As practice and experience under the constitution in question increases, any deficiency which at the outset may have place in regard to these requisites, in the instance of the democratical members, will be receiving continual supplies: the demand, therefore, for any such aristocratical assistance will, in the same proportion decrease.

In comparison with the aggregate number of the members of the democratical section of the public-opinion tribunal, that of those of the aristocratical will be small. Here, then, is another reason why the number of the aristocratical members in each such committee should be small: for the larger it were, the greater would be the number of those on whom the burthen of such attendance (in proportion as the attendance were felt as burthensome) would be pressing.

From interests, real or supposed, come desires: from desires come expressions of will and expressions of opinion, for the purpose of drawing through the medium of opinion other wills into a coincidence and conformity with a man's own. From the united force of an adequate number of wills, in appropriate and adequate situations, come legislative arrangements.

But, in the drawing together of opinions, great is the advantage which the aristocratical section has over the democratical. In the aristocratical section is the acknowledged standard of taste; and the taste of the aristo-

crat is always conformable to, and to a great extent determined by, interest—by their separate and sinister interest. To increase their own importance, the ambitious youth of the democratical section, and those who float between the two sections, make a point of adopting declaredly the tastes and opinions of the aristocratical, that they may be regarded as belonging to it, and be accordingly respected and courted.

By substituting the principle of taste to the greatest happiness principle, taste is made the arbiter of excellence and depravity; and thus the great mass of the community is in the very sink of depravity. Witness the use that is made of the words *bad taste* and *disgusting*. Bad taste pours down contempt: disgusting is a superlative above flagitious,—it is a *quasi* conjugate of *taste* and *bad taste*. Those of the democratical section, in so far as they adopt such expressions, act in support of the hostile section against themselves. For the rich and powerful will always be the arbiters of taste: what is an object of disgust to them will, to those who follow this principle, be an object of disgust likewise. But that the poor, labouring and non-labouring,—all those who cannot afford a clean shirt every day, and a suit of clothes every two or three months,—are, to the men of the first circle, objects of disgust, is altogether beyond dispute.

As to distinction between these two sections,—to draw any determinate boundary line,—a line, on the one side of which shall be the situation of the several individuals belonging to the one section; on the other side, all the several individuals belonging to the other, is plainly precluded by the nature of the case.

If, of the superiority in question, there were but one element, say factitious dignity, yes: to the aristocratical belong all who possess any particle, however small, of this creature of the imagination; to the democratical all who have not any particle of it. So, perhaps, if instead of factitious dignity it were power: understand political power, to the exclusion of domestic. So far, then, as depends upon two of the species of matter of which aristocratical superiority is composed, yes. But what remains is the third, composed of the matter of wealth. To this species attach two causes of impossibility: one constituted by the article of *quantity*, the other by that of *time*.

First, with reference to quantity. As where physical light is concerned, it is impossible to say where dullness ends and gives place to brightness; so is it to say where poverty or indigence ends and gives place to affluence. So as to time. Suppose the quantity determined, and thereby the section to which each man appertains. For to-day, good: but to-morrow, some men, in any number, by increase given to this quantity, have, from the indigent class, been lifted up into the opulent: others from the affluent been sent down into the indigent class.

Nor yet, with a view to action, to influence on the conduct of the individuals in question, are the above, any of them, the immediately operating efficient causes. Of action the sole efficient cause is interest, if interest be taken in its most enlarged sense: *i.e.* according to each man's perception of what, at the moment in question, is his most forcibly influencing interest: the interest determined by social sympathy and antipathy, as well as that which is of a purely self-regarding complexion, included.

Thus to the purpose of action, to the aristocratical section belong all such individuals who, by hope of factitious honour, power, or wealth, are dependent on the members of the aristocratical section: so to the democratical belong all those who, their self-regarding interest in any of these shapes notwithstanding, are listed on the democratical side by sympathy with the sufferings of those belonging to that section, or by antipathy towards this or that portion of the aristocratical section: belonging in reality to a side to which they are opposed in appearance.

CHAPTER IX.

GOOD RULE AND BAD RULE.

Of bad rule, or say misrule, the sensible evil effects in all shapes, are reducible to one or other of two denominations—oppression and depredation.

They may even be comprehended under the single name of oppression: the exercise of depredation in so far as committed by the hands of rulers, being but a particular modification of oppression: oppression exercised for this particular purpose: applied to the purpose of obtaining benefit in some shape, at the expense of the persons on whom the oppression is exercised.

But oppression may be exercised in cases where no immediate benefit in any shape, is the object, the attainment of which is the final cause of the oppression exercised: no benefit in any shape, unless the pleasure resulting from the contemplation of the suffering produced by the oppression in the breast of the oppressed person, be regarded as coming under the denomination of benefit.

Though in this way the cause of the evil may, in all its shapes, be comprisable under the one denomination of oppression, there will be a convenience in the employing of the other denomination, namely depredation likewise, and thus considering it as something distinct from oppression at large. For as in the two cases, the evil effects on the part of the sufferers are different, so are the modes of operation on the part of the agents different.

The giving support and strength to the power of depredation is the chief purpose to which the exercise of a power which, in its

immediate effect, is purely oppressive, is principally directed.

When, for example, individuals who are suffering under the privations produced by the depredation exercised at their expense, make communication of their sufferings, or of the cause to which they ascribe those sufferings, or of the displeasure with which the authors of those sufferings are regarded by them; and for the making of such communication to this effect, pain, under the name of punishment, or any other, is inflicted on them, without anything in the shape of money, or anything else, from the use of which the rulers would derive pleasure in any shape, being taken from them; here, indeed, oppression is exercised on them, but it cannot be said that in this particular instance depredation is exercised upon them: at the same time, but for the depredation the oppression would not have been exercised.

In every government, which has for its object and effect the pursuit of the happiness of the governors at the expense and by the correspondent sacrifice of the happiness of the governed, oppression at large will be the habitual and unintermitted practice of the government in all its ranks.

The only species of government which has or can have for its object and effect the greatest happiness of the greatest number, is, as has been seen, a democracy: and the only species of democracy which can have place in a community numerous enough to defend itself against aggression at the hands of external adversaries, is a representative democracy.

A democracy, then, has for its characteristic object and effect, the securing its members against oppression and depredation at the hands of those functionaries which it employs for its defence, against oppression and depredation at the hands of foreign adversaries, and against such internal adversaries as are not functionaries.

Every other species of government has necessarily, for its characteristic and primary object and effect, the keeping the people or non-functionaries in a perfectly defenceless state, against the functionaries their rulers; who being, in respect of their power and the use they are disposed and enabled to make of it, the natural adversaries of the people, have for their object the giving facility, certainty, unbounded extent and impunity, to the depredation and oppression exercised on the governed by the governors.

The argumentation, creation, or preservation of felicity, being the all-comprehensive object of desire and end in view, as to human action in every situation, so, necessarily in that of all those by whom rule is exercised, felicity, together with its opposite, infelicity, in their several modifications, are as necessarily the subject matters of its operations. But in their several modifications, these same elements are also, by an equal necessity, rendered the equally necessary and indispensable instruments for the attainment of that end. In no case without the elements of infelicity and felicity, only by pain and pleasure applied to them in a certain manner, can sensitive beings be rendered instrumental in the exclusion of evil, or in the production of good: in the exclusion of pain, or in the production of pleasure.

When, however, they are spoken of, as being employed in the character of instruments, they are spoken of by appellatives, different from those by which they are designated, when spoken of in the character of ends.

Force, intimidation, and remuneration: by one or other of these three denominations may be characterized all those incorporeal instruments of rule, which being indisputable instruments of all rule, cannot therefore but be such with relation even to the best rule.

By force, understand here *physical* force—that of which the body as contradistinguished from the mind, is the seat. Only by means and through the intervention of this instrument, can those others be brought into action. Only by physical force, (by whatsoever agent applied to them,) can any operation be performed upon objects not endowed with sensation, in a word, upon inanimate things: and in this respect many are the occasions on which this only mode of operating upon things, is not less necessary to the purpose of operating with efficiency upon persons. Only by force, by physical force, can a person who, against the will of the occupant, continues in a house, be removed out of it, if neither intimidation nor remuneration are capable of being applied with effect to the purpose of affording him an inducement, adequate to the purpose of causing him to remove himself.

Force, in so far as considered as being applied to the mind, and applied not without effect, is termed *intimidation*.

Intimidation is the eventually efficient cause of the matter of evil, considered as applied to the purpose in question. The most prominent and extensive instance, is that in which the matter of evil is applied to this same purpose in the character of matter of punishment: punishment in the event of a man's failing to contribute to the felicity of the person in question, in the manner pointed out to him by the directive rule of law, which the arrangements of government furnish.

Remuneration, is the efficient cause of the matter of good, considered as applied to the purpose in question: good applied in consideration of a man's having contributed, or being engaged, or expected to contribute to the felicity of the person in question, in some manner pointed out, as above, by directive rules, laid down with more or less precision by those arrangements, in the furnishing of which the government is occupied.

Among the imperfections of language, may be reckoned the not furnishing a denomination which shall designate in relation to good, that which is designated by intimidation in relation to evil. Intimidation, is fear excit-

ing: what is wanting is a single word by which hope-exciting may be expressed.

The more particularly the analogy between punishment and reward is brought to view, the more ample is the practically useful instruction that is conveyed. The more clearly it is seen that *to reward is to punish*, when the dispensing hand in question is the hand of government, and that as to whatsoever is above the least quantity sufficient, remuneration is depredation,—with the less difficulty will men be brought to extend to the matter of reward, whatsoever frugality they are not averse to apply in the case of punishment.

Towards the holding up to view this instructive analogy, something, it is hoped, has been done in the *Théorie des Peines et des Récompenses:* but, on going back to it, I should not expect to find that as much was done there as might at present be done.*

Intimidation and remuneration are employed, both of them by good rule and by misrule. But, though in this they agree, there is one point in which they not only are different, but opposite: this is the *quantity* of the matter which they respectively employ. By good rule, it is, as in the one case, so in the other, minimized; it is the least possible: by misrule, it is maximized.

By good rule, intimidation is minimized. Why? Even because threatening to produce evil would be in vain, if with more or less frequency the threat were not executed—the evil were not produced: and even because the fear of evil is itself evil: from the fear of sufferance, actual sufferance is inseparable.

By good rule, allurement, or prospect of remuneration, is also minimized. Why? Because, in government, good is not procured but by means of evil: the matter of good by means of the matter of evil. Indeed, to no small extent the matter of good and the matter of evil are one and the same thing. Witness wealth: witness power. By the receipt of wealth, pleasure—enjoyment is produced: by the loss of it, pain; and so likewise in regard to power.

Between wealth and power, the connexion is most close and intimate; so intimate, indeed, that the disentanglement of them, even in the imagination, is matter of no small difficulty. They are each of them respectively an instrument of production with relation to the other. By wealth, with or even without parting with it, power may be obtained: even in the import of the word power, that of wealth is included: since power, employing for its instrument the matter of remuneration, includes in it, the power of making application of the matter of wealth, and thereby the possession of it. Occasions, however, are not wanting in which, while on the one hand, wealth is conferred, no power over any particular person, or any particular thing, is conferred. Occasions on the other hand are not wanting, in which, while power is conferred, the matter of wealth is not at the same time in any determinate shape conferred. Anything else that comes under the denomination of remuneration, follows or does not follow, according to the use that happens to be made of the power.

Under misrule, waste of the matter of good and evil, in both its forms, takes place of course: the quantity wasted affords a measure, the most exact that can be found of the degree or quantity of the misrule—of the badness of the rule: receivers of the bitter fruits, the adversaries of the misrule; of the sweets, its chief operators and their accomplices.

As to adversaries, misrule has as many as among the individuals subject to it, there are those who, to sensation, add the faculty of thought: proportioned to the degree of sufferance, is the degree of resentment naturally produced. Thus it is, that misrule has for its inseparable concomitant, the thirst of vengeance: and this thirst is essentially insatiable.

As to the sweet fruits, it is under pretence of the demand for them, in the character of instruments of government, that they are collected. That to this destination they are in part applied, is what cannot be avoided on the one part, nor denied on the other; for otherwise, the government, whatever it be, could not be in existence. But to this indispensable portion is added, of course, as large a portion as possible, of which there is neither need nor use: and this needless and superfluous portion, is what in addition to whatsoever is needful, is made the subject of division among the rulers, their instruments, dependents and favourites.

In addition to force, intimidation, and remuneration, which are necessary to all rule, misrule adds corruption and delusion.

The matter or efficient cause, of corruption, is the matter of good, considered as employed in giving effect to sinister interest, and thereby to evil.

By delusion, understand the production of erroneous conceptions, the effect of which is to engage men to concur in the sacrifice of the universal to the sinister interest.

In regard to these instruments of misgovernment, the need there is of them differs more or less according to the form of the government.

Considered in regard to its form—a government is in the hands either of a ruler, or of rulers. If in the hands of a single ruler, it is a pure monarchy.

If in the hands of rulers more than one, it is either an unmixed or a mixed government.

If an unmixed government, it is either an aristocracy or a democracy.

If a mixed government, the mixture may be composed of monarchy and aristocracy alone, of monarchy and democracy alone, of aristocracy and democracy alone, or of monarchy, aristocracy, and democracy—all three.

* See, in this collection, vol. i. p. 390, vol. ii. p. 189.

Of these seven cases, the exemplifications of pure monarchy are most numerous.

The case of pure aristocracy is not exemplified to any considerable extent.

Of the case of pure democracy, the longest established, and as yet the only completely established, exemplification, is that afforded by the cluster of incorporated republics, constituting the Anglo-American United States.

Of the mixture composed of monarchy and aristocracy, an exemplification is now scarcely to be seen anywhere.

Of the mixture composed of monarchy and democracy, an exemplification may be seen in the case of Spain, as also in that of Portugal.

Of the mixture composed of monarchy, aristocracy, and democracy, in howsoever different proportions, exemplifications may be seen in England and in France.

In regard to the use made of the two abovementioned instruments of misrule, the case of the bipartite mixture composed of monarchy and democracy, and that of the tripartite mixture composed of monarchy, aristocracy, and democracy, are so nearly the same, that what is said of either one, may with very little variation be found applicable to the other.

As, in so far as with monarchy, a portion of either of the two other simple forms of government has place, the power of the monarch finds a limit in the power or powers thus conjoined with it: the will of the monarch has a source of resistance and obstruction in those other wills. The sensation thus produced in his breast, being of an unpleasant nature, an object of his constant endeavour will of course be, the removal of it, by the lessening of the obstructing power—by lessening the resistance opposed to his will by the obstructing wills.

Wherever such a monarchy has place, the disposal of official situations, is to an extent more or less considerable, in the hands of the monarch: and to these same situations (all or most of them, objects of general desire, above-mentioned) is attached, money and power, with or without factitious honour and dignity. This power is called the power of *patronage*. It is the interest and desire of the monarch to increase the number of these situations as much as possible. It is the duty of that body to which belongs the portion of power co-ordinate with that of the monarch, with reference to the interests of the community at large, to diminish the number of those situations.

In so far as between the monarch on the one hand, and the majority of representatives as they are called, on the other, an agreement can be come to, and is accordingly come to, respecting the proportions in which the patronage shall be shared between the parties, the sacrifice of the universal interest, takes place of course.

The arrangements which afford a promise of operating as securities to the fabric of government, against corruption, and corruptive influence,—against that dry rot, to which all government stands exposed, by the nature of the materials of which it must everywhere be composed, may, it is believed, be comprehended all of them, under one or other of the heads following, viz.:—

1. Minimizing the quantity of power in the hands of the functionaries.
2. Minimizing the quantity of the matter of wealth at the disposal of functionaries.
3. Minimizing the quantity of the matter of wealth, employed as pay of functionaries.
4. Applying legal counterforces to the power of functionaries.
5. Applying moral counterforces to the power of functionaries.
6. Exclusion of factitious honour, or say factitious dignity.
7. Exclusion of all other factitious instruments of delusive influence.

As in the case of every other act, so in the case of every act of government: add the power to the will, the act takes place: take away either, the act does not take place.

The problem is,—throughout the whole field of legislation, how to prevent the sinister sacrifice: leaving at the same time unimpaired, both the will and the power to perform whatsoever acts may be in the highest degree conducive to the only right and proper end of government,

In the case of a public functionary, the *will* is on each occasion under the pressure of two opposite and conflicting interests: his fractional share in the universal interest, and his own particular and personal interest. The *former* is a fraction, and everywhere a small one,—a partnership interest in a firm in which the partners are counted by millions: the *latter*, is an integer: and the forces with which they act, are proportional. Still, be the fraction ever so small, action will be determined by it, if the integer be either taken out of the scales, or overbalanced.

Whatsoever arrangement has for its object the prevention of the sinister sacrifice, must apply itself either to the will or the power: but the same arrangement may apply itself to both.

Of the two necessarily conjunct faculties, take in hand first the power: leaving the power to do good, take away, or if that cannot be done minimize, the power to do evil.

Into the composition of all power, enter three elements: intensity, extent, duration. Its intensity has for its measure the magnitude of the effect produced by the exercise of it, within the extent assumed by it: the extent, has for its measure, in so far as it has persons for its subjects, the number of those same persons; in so far as it has things, their number and respective values: as to duration, it has in this case, the same measure as in all other cases.

In the highest rank, to the intensity of power, it will be seen, no limits can easily, if at all, be assigned, without taking away along with

the power to do evil, the power to do good, and thus leaving evil unopposed: to the extent still less: to the duration, with the utmost ease, as well as perfect safety: witness in a word the United States.

In any rank, but the highest, limits may be set to it, in any of its elements or dimensions, without any the slightest difficulty.

Power, considered in respect of the instruments by which it operates on the human mind, and exercises it, is either power operating by punishment, whence fear of evil, or power operating by reward, whence hope of good. Of reward or say remuneration, the main shape is the matter of wealth: or for shortness, (putting, as is not unusual, the part for the whole,) in one word, money: by which must in this case be understood not only money, but money's worth,—everything that is to be had for money. In so far as punishment is the instrument employed and trusted to, the word power is retained and employed; in so far as reward is the instrument employed and trusted to, the word money or some equivalent of it, is most commonly employed. And note, that by being taken away, the matter of punishment, may be made matter of reward, witness pardons: as likewise, by being taken away, the matter of reward may be made matter of punishment: witness fines.

When public money is placed at the disposal of a public functionary, the purpose for which it is so placed may be that of its passing out of his hands in exchange for something designed to be employed in the public service; or that of its being applied to his own use, in retribution for the services, whatsoever they may be, which he is regarded as rendering, or about to render, to the public.

So much for power taken by itself: for power, and the minimization of it, considered as a means of prevention applicable to the abuse of it. Now as to the other faculty, the will. By the force of that particular interest to the action of which every human breast stands exposed, every functionary is, at every moment prompted as above, to make by himself, or to concur in making, the sinister sacrifice. If this sinister force can by any means be prevented from becoming in that way effective, it must be by the operation of some counterforce, in addition to that opposed by his share in the universal interest: self-preference or sinister force the temptation, counterforce the sanction, antagonizing with one another. As to sanctions, three of them, there has been frequent occasion to hold up to view elsewhere: the political, including the legal, the popular or say the moral, and the superhuman, or say the religious.

For a counterforce to the native indigenous sinister interest, first as to the political sanction, including the legal. The force of this sanction is, the whole of it, at the disposal of the rulers: therefore in the very nature of the case, it is incapable it may be said of being opposed to them: if for a moment it were so, the next moment they would rid themselves of it. True. But though two rulers taken singly cannot be made punishable,—legally punishable at the same time and for the same cause, each of them by the will of the other—yet arrangements in considerable variety, are by no means wanting, by which opposition may, even under an absolute monarchy, be made for a time at least, to the will of the rulers, even of the supreme ruler or rulers. For example, in a monarchy, were it only to satisfy those whom it may concern that such as is expressed in a certain document, is the will of the monarch, the countersign, the name for example of some official servant of his is regarded as necessary,—this servant so long as he continues in such his office, has a negative upon that branch of his master's power, and possesses in conjunction with him, a share in it.

So again in an absolute monarchy, suppose two official servants in the service of the same monarch, in the same office, or in different offices, and one of them having committed a misdeed, the other takes measures for punishing him: the misdoer being at the same time a favourite with the monarch. To the monarch were he so disposed, and determined to exercise it, the power of saving the misdoer from all punishment, and from all prosecution, cannot be wanting. But this power, for some reason or other, it may happen to him, not to be disposed to exercise: here, then, may be seen another instance of a counterforce even in an absolute monarchy, opposing itself to the will of the sovereign: a counterforce which though by adequate exertion it might always be in his power, yet for this or that cause, on this or that occasion, it is not his will to overpower, and reduce to inefficiency.

Thus have two instances of such counterforces been brought to view: both of them capable of having place even under the strongest of all governments—an absolute monarchy. But in like manner as these two may have existence, and actually have existence, so in any number may other such cases have existence. In the political machine, obstacles of this sort, have the effect that friction has in a corporeal machine.

Thus much may suffice for such counterforces belonging to the political sanction, as are capable of having existence, and not altogether without efficiency, even under and against the supreme power in a monarchy the most absolute.

Now as to the force of the popular or say the moral sanction, considered in respect of its capacity of operating in relation to the will of the possessor or possessors of the supreme power in the character of a counterforce. What for the present may suffice for bringing this moral force, to view, is the phrase public opinion: an object, the conceptions commonly suggested by which, though not as clear as could be wished, cannot be to any eye an al-

together new one. In the opinion thus denominated stand included all those by whose obedience, the power of the monarch be he who he may, or of the rulers, be they who they may, is constituted. Let this opinion take a certain turn, the habit of obedience ceases on the one part, and with it, all power on the other. Accordingly in every government but a representative democracy, the idea of this sanction (and of the counterforce which it opposes) is, of all ideas that are capable of presenting themselves to a ruling mind, the most disagreeable, the most hateful and afflictive. Between these two sanctions, in every such government a war has place, a war which, until either the form of the government be made to give way to the democratical, or the people reduced to the condition of beasts, and the force of this sanction thus reduced to nothing, can never cease.

As in a constitution which has for its object the greatest happiness of the one, or the few, the main object will necessarily be to minimize this counterforce, or even to annihilate it, so in a constitution which has for its object the greatest happiness of all, the great object will be to maximize it. The cause that presents itself as being in the highest degree conducive and contributory to this purpose will here come to be delineated in its place: and in the reception given to whatsoever shall promise to be in the highest degree contributory to this effect, may be seen, the most instructive test that imagination can frame of appropriate moral aptitude, on the part of rulers.

Lastly comes the superhuman or say religious sanction. But of this it will be seen, that to any such purpose as that of being employed in the character of a counterforce to the power of those, in whose hands is the force of the political including the legal sanction, it is essentially inapplicable. To the possessors of the supreme power, be they who they may, instead of being a counterforce, it will be an instrument in their hands: giving facility instead of applying restriction to misrule.

Is not the force of the religious sanction *capable* of being employed with useful effect, in the character of a counterforce to the possessors of the supreme operative power?

Assuredly not. The question here is—what shall be, what can be, reasonably expected to be done, by the possessors of the supreme operative power, in the way of applying a bridle to their own power? Only under the fear of what may otherwise happen to them, from the displeasure of the people, can they be reasonably expected to do anything to the intent of its contributing to this end. Under that apprehension it is not impossible, for it is not unexampled, that institutions may be established, operating with considerable force towards the production of this effect. But as to the force of the religious sanction, in no political state has the supreme operative power, ever made this application of it: in no political state is it at all probable, that by the supreme operative, any application should ever be made of it, to any other or better purpose, than that of an augmentation of its own force, instead of a diminution of it: in a word, the converting it, into an instrument of support to misrule, instead of an instrument of restraint upon misrule. A part of the people are separated from the rest: a pretence is set up of their holding with the Almighty Power, a sort of intercourse, which no other part of the people hold with it. Of this pretended intercourse, no proof has ever been given: the assertion is therefore plainly groundless. Yet upon no better ground than this unsupported assertion, do they take upon them to predict misery beyond conception, and without end, to whosoever shall presume to deviate in his conduct from the path whch they chalk out. This path, is the path of unreserved obedience to the rulers with whom they enter into a confederacy. This confederacy, for the purpose of enabling the contracting parties the more effectually to make the more extensive sacrifice of the greatest happiness of the greatest number, to their own particular and sinister interest, is called the alliance between state and church, or, in the order in which they are preferably mentioned, between church and state. Thus delusion lends its aid to oppression, and oppression extorts money to pay for the assistance of imposture.

As to moral and legal responsibility, the counterforces thus distinguished, require, in the first place, a joint consideration.

By moral responsibility, understand here the result of subjection, effective subjection—to the power of the moral sanction, as applied by the public-opinion tribunal.

By legal responsibility, understand effective subjection to the power of the political, including the legal sanction, as applied by the several legal judicatories that have place under the government in question.

To the word responsibility, the import thus attached, is common to all languages which have sprung out of, or derived supplies from, a Latin stock. In English, however, attached to this same word, is another import which requires to be distinguished from it. A person is said to be a responsible person, not in virtue of his actual and effectual subjection to either tribunal, (and in particular, the legal,) but in virtue of his being in such a situation, principally in respect of his pecuniary circumstances, that if it were the desire of government, that by means of coercion he should be made to do, or suffer so and so, he would accordingly be made to do so and so: namely by reason of his being in possession of benefits, either in money or power, or both, on which it would be in the power of government at large, and the judicial branch of it, in particular, to take hold, supposing it disposed to do so.

The distinction is a real and an important

one. In England, the situation of king, by the avowed state of the law, is placed above the field of legal responsibility, to the purpose of exposure to punishment. He cannot be made to suffer, nor, consequently, to do anything that it does not please him to do, or suffer.

In the other sense, however, he is in an abundant degree responsible: he has money enough for example, by which, could it be got at without his name, he could be brought to do anything which, by any one, it was desired he should be seen doing. It is by the plenitude of his responsibility in this particular sense, that he is eased of all responsibility in the general sense: so material it is that the two senses should be mutually distinguished.

In general, from the top of the scale to the bottom, the more abundantly responsible a man is, in respect of sufficiency, the less responsible is he in respect of effectual exposure to punishment.

Under an absolute monarch, no responsibility can, in the instance of any functionary under him, have place, unless such should be the master's pleasure: and it will not be the master's pleasure, unless he be an object of his personal displeasure, whatsoever misdeeds he may have committed, to the detriment of the universal interest.

So far as this effective responsibility has place, so far, it is evident, the power of the legal sanction cannot be presented in the character of a counterforce to the power of government, in the hands of a supreme ruler, or set of supreme rulers.

But a case not altogether incapable of having place is,—at the charge of one set of functionaries, his subordinates and instruments, say in the department of finance, he suffers punishment to be administered by another set, say those belonging to the judicial department: here, then, the force of one of those sets acts as a counterforce to another set, his equally obsequious instruments.

Thus much as to an absolute monarchy. In the case of a limited monarchy, the result is not, in this respect, materially different. In this case likewise, the power of giving impunity to any one, and every one, is commonly given by law: such is the general rule: and if in words and show there be any exceptions, the extent given to them is extremely narrow, and, even to that extent, they are without substance and effect. As to this point, between an absolute and a limited monarchy, the mean difference consists in this: the impunity which, in a direct and open way, might by law be alike conferred in both monarchies, is, in an absolute monarchy, accordingly conferred in a direct and open way; in a limited monarchy in some indirect and concealed way, in preference. In a limited monarchy, the acts of the monarch and his instruments are necessarily, in one way or other, more exposed to observation than in an absolute monarchy. Suppose then a case in which the grant of impunity would, in the eyes of the public, be in a flagrant degree repugnant to the received notions of justice, there may be a convenience in employing some indirect and covert method, rather than a direct and open one, for the production of the effect. A party of soldiers, for example, are they set on to slaughter a company of malcontents, whose abstinence from all violation of the law, has rendered it impracticable to apply punishment by the hand of a judge? The monarch, if he pleased, might first give the order to the slaughterers, and then pardon them. Under the English constitution, such is its excellence, the king might thus kill his subjects, and has done so, and yet no law be violated.

So much as to the case of a monarchy.

In the case of a representative democracy, at the charge of the members of the supreme operative power without exception, legal responsibility may have place without difficulty: legal responsibility, not in name only, but in effect, namely to the purpose of exposure to punishment. Even during their continuance in office, the minority remain, in the very nature of the case, in a state of legal responsibility, as towards and under the majority: and from and after the expiration of their authority, being on a footing no other than that of the other members of the community, they remain, each and every of them, responsible in the legal sense for whatsoever they may have done—whether in that situation or any other.

Look now to moral responsibility: responsibility to the purpose of eventual exposure to the punitive power of the public-opinion tribunal: and in particular, the power of the democratical section of that same invisible, yet not the less effectively operative, tribunal.

To not altogether ineffective responsibility in this shape, not only in a representative democracy, but even in an absolute monarchy, the possessors of the supreme operative power are capable of standing exposed. In fact in this shape, in some, even the most completely absolute monarchies, the monarch is always to a certain degree responsible, and feels himself so to be: though in some monarchies, at some times, such has been the feebleness of this responsibility, in the character of a counterforce to the powers of government in the highest grade, that the effect of it in respect of a cause of mitigation to the evils of misrule, namely of depredation and oppression, has hardly been perceptible.

The less the quantity of counterforce a public functionary feels opposed to his particular interest in other shapes, the greater the need there is of his finding it opposed to him in this shape. An absolute monarchy is therefore the sort of government in which the need of it is most pressing, and in which accordingly, if the end of the government was the greatest happiness of the greatest number, it would be established with the greatest promptitude, and maintained with the most

anxious care. But as in all monarchies the end in view is the happiness of the one with or without a small number of sharers in the operative power, the repression of this same prime instrument of security to good government and good morals, has been the object of the most anxious and uninterrupted care.

For bringing into action the force of the public-opinion tribunal—for bringing it to bear upon any pernicious act, by whomsoever performed, whether by a public functionary, or by a non-functionary, two distinguishable sorts of matter are contributory: namely evidentiary matter, and commentative matter or matter of comment. By evidentiary matter, understand matter, the effect or tendency of which is, to bring or hold up to view the individual act in question, in conjunction with all the several circumstances, on which the nature of its operation on the happiness of the community depends. By matter of comment, understand all such discourse the effect or tendency of which is, to afford indication true or false, correct or erroneous, concerning the operation of such act on the happiness of the community, in such sort as to be in this or that way contributory or detrimental to it.

All such salutary matter in both these forms, every functionary, in proportion to the power which, from the nature of his situation, he has of pursuing his own particular interest, at the expense of the universal interest, has an interest in the suppression of: an interest, the strength of which is in proportion to the profit capable of being derived by him, from such sinister acts. Every functionary in proportion to his power: and accordingly in a monarchy, whether absolute or limited, the monarch: in a monarchy, limited by an aristocracy, the aristocracy.

By every act a functionary exercises for the purpose of destroying or weakening the power of this counterforce, in order to prevent or restrain the publication of such tutelary discourse, he manifests himself an enemy thus engaged in a course of actual hostility against the happiness of the community.

In the sinister interest by which they are engaged in the endeavour to effect such suppression, functionaries engaged in giving execution and effect to the acts of a bad government, and functionaries engaged in misdeeds for their own benefit, in disobedience to the good acts of a good government, are naturally joined by individuals concerned, or meaning to be concerned in such pernicious acts, to the repression of which, the power of the legal sanction is not applicable.

Of every such *indication*, and of every such *comment*, the tendency is *defamation*: defamation with reference to the party to whom the alleged pernicious act, whatsoever it be, is thereby imputed. To oppose defamation as such, to oppose without exception or discrimination every act to which the term defamation may with propriety be applied, is to act as an accomplice to all crimes—as an instrument of all mischief as above. Every such act is therefore a virtual confession of such complicity: of such hostility to the happiness of the greatest number.

To profess to be a supporter, either of good government or of good morals, and at the same time to profess to be desirous of seeing defamation suppressed or even restricted, in a case in which the imputation conveyed by it, is true, is little less than a contradiction in terms: it is to desire that the same thing shall, and shall not have place, at the same time.

One case there is and but one, in which the effect of defamation, supposing the misdeed charged by it, really committed, is not to increase, but to reduce the quantity of happiness in the community. This is, where the mischief produced, is produced—not by the act itself, but by the disclosure of it. In this case are comprehended all those, in which for want of sufficient maturity in the public judgment, the popular antipathy has been drawn upon this or that act, the nature of which is not, upon the balance, of a pernicious nature.

Examples of this case are:—

1. In a community in which the public mind is infected with the disease of intolerance in matters of religion, indication of an act evidencing the entertaining an opinion contrary to that which is established or predominant.

2. So, in the field of taste. Eccentricity of any venereal appetite, the sexual for example, by which no pain in any assignable shape, is produced anywhere. Here by the supposition, by the act itself, no pain, no sensible evil is produced: but by the disclosure of it, evil to a most deplorable amount may be produced: by the antipathy, though by the supposition groundless,—by the antipathy called forth by it, a whole life may be filled with misery. The real enemy to the happiness of the community, is not he by whom this obnoxious act has been exercised, but he by whom the indication of it has been afforded. The suffering being greater, the mischief is greater, in the case where the act has been, than in the case where the act has not been really exercised. For he in whose instance, the imputation has been groundless, has for his consolation, that which is wanting to the other.

3. Indication of a breach of a marriage contract, on either side, more particularly the female. Suppose the commission of it unknown, no pain is produced by it anywhere. What then, when committed, ought it to remain exempt from punishment? Oh, no! Why not? Even for this cause: namely that without the commission, the divulgation could not have place: and that by commission, divulgation is always rendered but too probable.

Those who cry out against what they call the licentiousness of the press, as if it were so

much uncompensated evil, for which complete suppression would be an appropriate and innoxious cure, might with much more reason cry out against all punishment without distinction, and in particular against all punishment at the hands of the legal sanction, and the tribunals by which the force of that sanction is applied: for, in no other form, at once so gentle and so efficient, and in particular, in no form of legal punishment, could punishment be employed in the repression of anything, that has ever been characterized by the names of crime or vice.

Punishment, as applied by the legal tribunals, attaches to such evil acts alone, the mischief of which has place, as well in a shape sufficiently determinate, as in a quantity sufficiently great, to warrant the application of evil, in the shape and in the quantity to which the denomination of punishment is in common use. Punishment as applied by the public-opinion tribunal, applied as it is in effect, without the name, attaches itself to mischief in all shapes, in which the hand of man can without special and sufficient justification, be instrumental in the production of it.

Applied by the legal tribunal, punishment is not only thus narrow, in its applicability, and thence in its use; but continually exposed to the danger of running into excess: evils from which, the punishment which the public-opinion tribunal makes application of, is altogether exempt and free.

The efficiency of the popular or moral sanction, with its public-opinion tribunal, cannot be strengthened, but the efficiency of the law, in so far as its force is employed in augmentation of the happiness of the people, is also strengthened. In so far as a misdeed, which by reason of its detrimental effect on happiness, is *vicious*, and thereby exposes the agent to punishment, at the hands of the public-opinion tribunal, is moreover *criminal*,—an act of delinquency against the law, exposing the agent to punishment, at the hands of the law, —every channel through which defamation as above, may be divulgated, is a channel through which, in so far as the defamation takes this turn, strength and efficiency are given to the law.

Through these channels, men who would otherwise remain helpless, receive help, and abatement of their sufferings: injuries and sufferings which, would otherwise swell to a boundless magnitude, and be rendered altogether remediless, are met by complaint, and kept within bounds: through these channels men who, by their own indigence and the rapacity of lawyers, are deprived of all help at the hands of the legal sanction, with its judicatories, find a limit and a mitigation to their sufferings.

For, suppose the act in question, to be of the number of those, to which punishment stands attached, as well at the hands of the legal sanction, as at the hands of the popular or moral sanction: this being the case, to give intimation of it, to the members of the community at large in their capacity of members of the public-opinion tribunal, is to give indication, by the light of which, not only witnesses, but prosecutors at the bar of the competent legal tribunal, may be brought into action, and the further investigation of whatever relevant facts would otherwise remain in darkness, produced: that which to the public-opinion tribunal is evidence to the purpose of conviction in an immediate way, being to the legal tribunal, evidence to the purpose of investigation for the obtainment of ulterior evidence, such as suffices in the first place, for a ground to accusation; and in the next place, for the obtainment of such evidence as shall suffice for conviction and punishment.

Against all such misdeeds as are produced or protected by supreme rulers, the legal sanction, with the corresponding judicatories refuse of course all redress: against all such misdeeds, whatever redress, if any, is afforded, it is by the popular or moral sanction, with its public-opinion tribunal, that it must be afforded.

Of the channels through which, information in both its shapes, as above, must find its way to the public eye, and the public ear, beyond all comparison, the most ample and efficient are those, in the designation of which, the collective term, *the press*, is commonly employed: and of those again, the most ample and efficient are those, for the designation of which the collective term, the *periodical press*, is employed. Every act by which the net mass of benefit, derivable through these channels, is lessened or endeavoured to be lessened, is of the number of those by which the actor is rendered as above, an enemy to all mankind.

For lessening the net amount of this benefit, the nature of the case affords two expedients or courses of policy. The one consists in the blocking up of the channels, and thereby stopping, in the whole or in part, the current of information that would otherwise make its way through them to the eyes and ears of the public—of the members of the community taken in the aggregate. The other consists in rendering, in a greater or less degree corrupt and delusive, the stock of information, which is so received: the one system may be styled the blockading or obstructive system, the other, the corruptive. The obstructive operates by the simple subtraction of such information as being correct, is at the same time usefully instructive. The corruptive operates by the addition of a mass of information in itself false, and designed to be deceptious. By subtraction, deception may also be produced as well as by corruption. To this purpose, what may happen to be sufficient is, to render *partial* the stock which is suffered to pass on: partial, that is to say, in the bad sense of the word, being the same in which it is used, when sub-

servient to injustice; that which is regarded as operating against the side meant to be favoured by the deceit being stopped; while that which is regarded as operating in favour of it, is suffered to pass on.

For operating on the obstructive plan, the nature of the case affords two modes of restriction,—the licensing system, and the prosecuting system.

Licensing is an operation, of which prohibition, and that a universally extensive one, forms the principal ingredient. In the first place, comes prohibition which applies to everything: in the next place, comes permission, given to any such persons, or any such things, as it is intended to exempt from the prohibition.

In comparison with the licensing system, the prosecuting system is in an eminent degree inefficient. It cannot be employed, except in so far as the very sort of thing, which it is the endeavour of it, to cause not to be done, has been actually done. Where it does operate, its mode of operation is comparatively weak, and its effect uncertain. In the licensing system is included the employing, for the stoppage of the obnoxious matter, physical force: seizing, for example, the whole impression of a work, and either keeping or destroying it. It operates not only thus upon the body, but also upon the mind; viz. in the way of intimidation, by fear of loss, if similar works are prepared for publication in future. While it keeps from observation, the mischief which it produces, prosecution proclaims that same mischief. The punishment which, in the shape of loss, as above, is one of its means of action, is much more effective, than any which, being applied under the name of punishment, cannot be applied without prosecution, for a preliminary to it: not to speak of the expense, the uncertainty which, in the case of prosecution, always hangs upon the result, together with the delay and vexation, which even on the prosecutor's side, stand inseparably attached to prosecution, is saved. Not only too, is the punishment so much more efficacious; but it is, moreover, kept concealed from observation; and thus is not only more efficacious than punishment under the name of punishment, but at the same time less odious. Though it affords just ground for greater odium, yet it attracts less.

By the prosecuting system, punishment is applied as above, under the name of punishment, having, or seeking to have, the effect of prohibition. If, in England, it be in the way of common law that the punishment is applied, the prohibition is fictitious: as to the act for which the punishment is sought to be inflicted, there has been none. As to future contingent similar ones, each man is left to imagine for himself a prohibition, from the case in which he sees the punishment applied.

If it be in the way of real or statute law that the punishment is applied, the eventual denunciation made of it, comes before it—the subject of the prohibition has been described.

Prohibition is either complete, as, under the name of prohibition, it is of course; or incomplete, as it is, where in so far as, to the form of prohibition, that of taxation is substituted. Under every application of the taxing system, in so far as applied to articles for consumption or use, an application of the licensing system is contained. Pay the tax, you have a license to use the article; omit paying the tax, the license is refused to you. But under the licensing system, is in this case concealed the corruptive system. By the effect of the tax, such information as a man is able and willing to purchase, and obtain by paying the tax, is suffered to pass on, and reach him: such as he is either not able, or not adequately willing thus to purchase, is stopped and prevented from reaching him. Note the consequence, where there is a desire to serve the comparatively rich at the expense of the comparatively poor. That which the poor man has need of, to enable him to form a right judgment and pursue a line of conduct beneficial to his interest, is stopped from reaching him: while his comparatively rich antagonist receives the matter on both sides. In the contest between rich and poor, the means of attack are thus suffered to find their way to the rich: while from the poor, the means of defence are kept back, and rendered inaccessible.

The indirect mode of corruption, by garbling, is not altogether so mischievous as either of the two others. Of the matters thus kept from publication, no such individual selection can be made, as in the other case. Still, however, separation in no small degree mischievous can be made, and is made.

As it is only by the power of government, that this corruption and this obstruction can be carried into effect, it is manifestly for the purpose of misrule, for the purpose of giving extension and perpetuity to misrule, and thereby to human misery in all its shapes, that war upon the happiness of mankind, in both these shapes is carried on.

But information to any one nation, is information to every other: thus to add to misrule and misery, in one nation, by obstructing the press, is to endeavour to add to misrule and misery in all. It is still more extensively and effectively an act of hostility against all nations than piracy is. For the mischief and terror produced by a pirate is confined to the seas in which his acts of piracy are exercised: it is confined also within the space of time, never a very long one, during which those acts continue to be exercised. But the mischief produced by the suppression of information on the side of the victims of misrule, while false and delusive information in support of misrule is let through, may spread itself over all nations, and continue in all times.

Among the consequences of restrictions imposed in the ordinary form on the press, one is the efficiency thus given to false reports in their most mischievous shapes: false and mis-

chievous reports as such, whosoever may be the parties on whom the evil produced by them falls.

Take, in the first place, the situation of the ruling functionaries, and in particular those of the highest rank, in the scale of subordination. Defamation in the written shape, it is possible to keep suppressed. Defamation to the same effect, in an oral shape, it is not possible to keep suppressed. You may keep a watch upon all presses: you cannot keep a watch upon all tongues. When it is in a printed shape, it is in a determinate shape: and being in a determinate, and that an enduring shape, any one who feels disposed to make answer to it, knows what it is he answers, and where to find it. In whatever state it first makes its appearance, in that state it remains: it cannot by the author, or by the adopter, be altered from shape to shape, in a manner contrary to truth and justice, just as occasion calls. It may be met and opposed in whatsoever manner is best adapted to the nature of it. Is it in any way false, it may be opposed by simple denial, or by the statement of the opposite truth: is it not only false but improbable, the arguments demonstrative of the improbability may be opposed to it: is it mischievous, the mischievousness of it may be laid open to view, and shame proportioned to the evil, be poured down upon the head of the author and his accomplices in proportion as they are discovered.

Such are the facilities which present themselves for the encountering of it, when the shape in which it presents itself is thus determinate.

Now, suppose it merely in the oral shape. Being refutation proof, being proof against exposure, the probability is, that even in its first shape it is false. It is either a complete fabrication, in the whole texture of it, or if there be a groundwork of truth belonging to it, an embroidery of falsehood is interwoven in it, such as suits the particular purpose, whatever it be. But this first, howsoever mischievous and injurious, is naturally its least mischievous and least injurious shape: and even in this shape, it is not capable of being encountered. From the first mouth it passes on to another, and in the second mouth further mischievousness, further injuriousness, with or even without consciousness and intentionality, are naturally added. Thus it travels on, from mouth to mouth, and as it rolls on, it adds to its mischievousness and injuriousness at every stage: to the number of these stages, there is no limit: and at no one of them, can it ever be encountered.

A circumstance which has a natural tendency to provoke falsehood, and through falsehood, injury to the prejudice of the government by which the restriction is imposed, is the resentment which the restriction itself calls forth: a resentment, than which nothing can in any case be better grounded or more just. Where oppression is exercised, and there is no other remedy,—no other defence against it is afforded by the nature of the case, falsehood if not justifiable, is at any rate comparatively excusable. Of every such restriction, the effect and object is to secure efficiency and impunity to oppression and depredation in every shape, the worst imaginable not excepted. From no course that can be taken by the endeavour to put an end to such an instrument of oppression, can any evil be produced equal to the evil produced by the application of the instrument itself, if the application be effective.

To the encountering of such endeavours by appropriate falsehoods, in the way of retaliation, the grand objection is, that in general it will be needless: for, seldom are they employed but for the purpose of concealing enormities, the correct statement of which would suffice for the imfamizing of the oppressive rulers, without the addition of anything that is not true: and besides, in proportion as falsehood comes to be discovered, the discovery casts reproach upon the heads of those concerned in the propagation of it, and discredit upon such reproachful imputations as are true.

Be this as it may, thus much is clear, that where any such restriction is employed, whether all the injurious allegations made against the rulers are true or not, no suspicions that can be entertained of them can be ill-grounded: for, supposing the intentions of a ruler the worst imaginable, such is the course which he would not fail to take for the carrying of them into effect: while on the other hand, suppose his conduct free from all just imputation of misrule, no need would he have of any such screen: the just odium which the employing of it could not fail to draw upon him, would be so much net evil drawn down upon him by himself.

By no number of determinate acts of tyranny, could a more proper and reasonable cause for resistance and insurrection be afforded, (supposing success in a sufficient degree probable,) than by the establishment of this restriction: for in the use of this instrument, the intention of exercising tyranny in its worst shape is included: the intention, coupled with a probability always but too great, of its being carried into effect.

In proportion to the amount of the burthen of the restriction, does it exclude from the exercise of the functions of the public-opinion tribunal, a number more or less considerable of its members: it excludes from the benefit of appropriate information, those in whose instance such information is most needed.

There are two correspondent and apposite modes of laying claim to the exercise of the blockading power, on the ground of alleged or assumed superiority in intellectual aptitude: the one consists in magnifying the alleged aptitude of the governors; the other in parvifying the aptitude of the governed. Each of them is employed as occasion serves. The parvifying mode may be used in all situations, as it may happen: it gives no offence to

the reader or hearer, if he be of the ruling, or otherwise, influential class: in a word, unless, in his own conception, he belongs to that inferior class at the expense of which the pretension is set up. The magnifying mode, being in fact, the self-magnifying mode, cannot, without giving offence, be employed in any other situation, than those in which custom has thrown its veil over arrogance, impudence, and insolence: namely, the situation of those, by whom the power of surmounting contradiction by punishment is possessed and exercised.

It is curious to see with what complacency, in certain authoritative discourses, the possession of the maximum of official aptitude in all its branches, and in particular, intellectual aptitude, in the degree indicated by the romantic appellation, wisdom, is predicated of themselves, by the very scum of the population: for be it pot or be it kingdom, that which occupies the top of it, is it not the scum? by a set of men, in comparison of whom, the most vicious of those whom they consign to death, or punishment which ends not but with life, are virtuous: by a body, composed of the principals and instruments of misrule, depredation, and oppression, all upon the largest scale: of corruptors and corrupted: of selfish and empty-headed lawyers:—led by a few venal utterers of vague generalities and common-place fallacies: men, whose minds being debilitated by that worse than useless education, which under a system of corrupt and corruptive establishments, overgrown opulence bestows, know not an unapt argument from an apt one, a relevant argument from an irrelevant one, possessing neither the inclination nor the ability to discern the difference.

Whichsoever of the two courses be taken, they lead to the same result: absolute power on the part of those on whose behalf they are taken: absolute subjection, with no option, other than that between silence and obsequiousness, on the part of those at whose expense they are taken. "What by depravity, what by folly, you are incapacitated not only from giving direction to your own conduct, but from having any part in the choosing of those, by whom direction to it shall be given. Such being your deplorable state, it belongs to us, and to us alone, to give direction to your conduct in this line, as in every other; to determine what you may say, and what you shall not say: for, so sure as you are suffered to say anything to our prejudice, to start so much as a doubt on our probity or our wisdom, so sure will you do injury, irremediable injury to yourselves, and to one another. The points by which your happiness now and for ever, is most deeply affected, are those which belong to religion and politics: on these, it is therefore, in a more particular manner, our duty to prevent your looking in any other point of view, than such as we prescribe. It is your first of duties to hold yourselves deprived of all liberty on these points: it is our first of duties, so to hold you deprived of it."

Thus it is, that with benevolence in their mouths, all by whom any such language is employed, declare themselves in effect, enemies of mankind. If the benevolence be but in their mouths, it is bad: if it be in their hearts, it is worse, still worse. If so it be, that it is only by some temporal and temporary interest of his own, that a man is induced thus to persecute and torment others, no sooner is that interest overcome by an opposite interest, than the persecution ceases: by force, by intimidation, by superior benefit from a contrary course, he may be led to give it up at any time. But if it really be, either by fear of infinitely intense and lasting torment, or hope of infinitely intense and lasting happiness, that a man stands engaged thus to do his utmost for the tormenting of others, in the only state of things which falls under our experience or observation, his mischievousness in the first-mentioned character is small in comparison with his mischievousness in this. If in all other points, his conduct be even a pattern, not only of beneficence, but of benevolence, he is rendered by it but the more mischievous: the more so, the more extensive his beneficence; for the utmost good a man can do by beneficence in other shapes, can never approach to the evil it may happen to him to do by maleficence in this. If, therefore, there be a sort of man whom interest and moral duty, should lead all others to shun contact with, as they would shun contact with a man infected with the plague, it should be the man, who, under a sincere persuasion of religious duty on his part, seeks to prevent others from the defence or utterance of opinions, be they what they may, on any subject belonging to the field of religion, or the field of government.

In the case of private defamation, the mischief stares every one in the face. But along with it is mixed much good, and of this good, men do not in general seem sensible.

To take the strongest case,—the case in which if in any, the evil would appear pure,—the case where the misconduct imputed is, by the imputer, known not to have had place: the imputation, in a word, known to have been knowingly and wilfully false. Here the effects of the first order, the uneasiness experienced by the individual to whom the misconduct is imputed, are evil: though less evil, than where the imputation is true, because a man suffers less from the imputation when groundless, than when true. The effects of the second order, the apprehension excited in other persons at large,—the apprehension of being made sufferers by similar attacks from the same or other sources, are also evil. But by the contemplation of the evil suffered in these two ways by groundless imputations, the attention of men is directed to, and the more firmly fixed upon, the like suffering as being

more or less likely to be produced by true imputations: and in this way, accordingly, addition is made to the fear of punishment at the hands of the public-opinion tribunal. What is too obvious and too certain, to pass unnoticed is, that, the inducement being equal in both cases, a defamer, if he knew of an article of misconduct of which his intended victim had been really guilty, proofs of his guilt more or less satisfactory, being in existence, would never think of preferring an ungrounded accusation in any shape to that same well grounded one.

Not that currency knowingly allowed to false and unjust imputation, is in any degree, as such, conducive and necessary to the repression of the misconduct that would have had place, had the imputation been well grounded.

Not that the antipathy against the inventors and common circulators of such false imputations, is not well founded: not that they ought not to be subjected to legal punishment, in so far as sufficient proof can be obtained.

All that is meant is, that all imputations grounded and ungrounded together, ought not to be suppressed without distinction, for the more effectual suppression of ungrounded ones. The public-opinion tribunal with its numerous useful effects, ought not to be suppressed, for the single benefit of more effectually preventing the pernicious ones.

That which a man suffers, in whose instance the imputation is false, is little in comparison with what the man suffers, in whose instance the same imputation is true.

Accordingly the marks of vexation exhibited will naturally be in the same proportion: the intensity of the desire manifested for suppression and vengeance.

Factitious honour is a sort of counterfeit substitute for money, invented and fabricated by governments. Money procures services: factitious honour procures services, and among them even such as it is not in the power of money to reach.

Power and money, though, in both instances, the less the quantity that can be made to serve the better, are, to the purpose of doing good, indispensable instruments in the hands of rulers: they are both of them, according to the direction in which they are made to operate, instruments of preponderant good, or instruments of preponderant evil. Factitious honour, it will be seen, is purely an instrument of evil. In the hands of rulers, power and money require to be minimized; out of the hands of rulers, factitious honour requires to be altogether kept.

One advantage, in beginning with power, on the occasion of the minimization process,—one reason for proceeding in this order may now be visible: the less the power you have to contend with, the greater the facility in such application as you have to make to the will. Thus, as above: if the possessor of the power is, at all events, to keep his hold of it so long as he lives, or even so long as he remains legally unconvicted of a specific misdeed, the difficulty of dealing with him may be insurmountable: and by a mass of power, small in extent, as well as intensity, evil to an almost indefinite amount may be produced, were it only that by means of one lot of power thus intrenched as in a stronghold, others indefinite in number and value may be added by him. On the other hand, when it is to the dimension of its *duration* that the defalcating-knife is applied, no power so ample in its other two dimensions but may be conferred with comparative safety. Witness, in the Roman commonwealth, the dictatorship,—a power which, with the exception of what was thus defalcated from it, was absolute monarchy.

All this while, one thing is undeniable, namely, that for the purpose of establishing, and in the endeavour to establish, security, those who establish government must begin with establishing insecurity: insecurity, viz. as against those in whose hands the means of security against others are reposed. On the other hand, another thing is no less undeniable: namely, that without this risk, the other, a still greater evil, cannot by any possibility be avoided, and that is, want of security against foreign enemies or unempowered malefactors.

Another thing equally true is, that by the badness of other governments, whoever you are, you are prevented from making your own, whatever it is, so good as otherwise it might be.

In this case are the civilized nations of Europe at present with their standing armies. In every foreign nation, each nation beholds a population which may every moment become a hostile one,—a population of foreign adversaries: each nation is thus laid under the unhappy necessity of providing itself with a correspondent instrument of defence: to preserve itself from a distant yoke, it submits itself to present servitude.

Hence it is, that to the other articles in the list of counterforces must be added the institution of a national militia.

The more extensive this counterforce is, the greater the security of the nation, not only against foreign, but against domestic adversaries: not only against the rulers and subjects of every foreign nation, but against its own rulers, whoever they are.

Against these, where the quantity of armed force in this shape is at its maximum, so is this security—the security thus established: in a word, it is entire: for in this case, the degree of efficiency with which, in case of depredation or oppression on the part of rulers, the people are capable of acting in concert, for the purpose of redress, is at its maximum: an entire people, with arms in their hands, cannot be employed as instruments of oppression: why? for this plain reason, that they have no victims to act against—to operate upon.

The elementary units of this force—the individuals of which it is composed, are no other than the members of the public-opinion tribunal. They are judges with arms in their hands, prepared, in case of necessity, to give execution to their own judgments.

A force thus circumstanced may be so organized, as that while it is incapacitated from being made to act as an instrument of offence, it may be rendered completely adequate for every purpose of defence: and to this purpose one simple arrangement is sufficient: a declaration, that without an express law for the purpose, no part of the population thus fortified shall be obliged or permitted to move out of the territory of the state.

For providing the community with the very maximum of force in this shape, small, in comparison is the utmost expense that can be necessary.

Of the incorporeal instruments of misrule, shall fiction be added to the list? With respect to the others, it is altogether disparate: for it is not produced by the same efficient causes, —by money, power, and factitious honour.

Though not the sister of delusion, it is, however, in a certain sense, the offspring of that evil genius. Fiction, men have actually been made to regard as an instrument apt and necessary to good government in general, and to good judicature in particular.

So mischievous an error, where shall the efficient cause of the prevalence of it be found? In delusion,—in delusive influence. By the same causes that delusion has been produced, has this pre-eminently mischievous error been produced. By the several efficient causes of delusive influence, men have been led to regard as their natural and best friends—their protectors and guardians, their most implacable and irresistible enemies; namely, kings, and judges and advocates, placed over them by kings.

For giving effect to the system of depredation and oppression, concerted between the arch-depredator and these his instruments, they have woven a tissue of falsehood—they have concocted a mass of poison in the shape of falsehood, and with the name of fiction,—which, by the stupid ignorant patience of the people, they have been suffered to inject into every vein of the body-politic, and have thus added this source of corruption to the others.

Corruption and delusion are necessary concomitants to each other: the same causes that produce the one, produce the other likewise: the corruption cannot exist, but the delusion must exist likewise: the delusion cannot exist, but the corruption must exist likewise: for it is out of the same matter that both evils are engendered.

Not so fiction. Without fiction, corruption and delusion might have done their worst.

Fiction is a production of peculiarly English growth. In the Roman law, the word may here and there be seen.*

Fiction debases the moral part of the mental frame of all those by whom application is made of it.

Fiction debases the intellectual part of the mental frame of all those upon whom the imposition passes, and by whom the lie uttered in place of a reason is accepted as constituting a reason, and that a sufficient one: and when employed by a judicial functionary, the evil is greatly aggravated.

In general, fiction may be stated to be an instrument of arbitrary power, invented by functionaries invested with limited power, for the purpose of breaking through the limits by which their power was intended to be circumscribed.

Reference had to the greatest happiness of the greatest number, appropriate aptitude, on the part of public functionaries, depends upon the efficiency and the use made of the several securities above-mentioned.

Reference had to the greatest happiness of the ruling one and few, appropriate aptitude, on the part of those same functionaries, depends in great measure on the non-application of those same securities.

Taking them one by one, the state of the matter in this respect will be as follows:—

GOOD GOVERNMENT.

I. *Moral Aptitude.*

1. Identification of rulers' interest with people's interest.
2. Minimization of rulers' power.
3. Minimization of money at rulers' disposal.
4. Minimization of rulers' pay.
5. Maximization of legal responsibility.
6. Maximization of moral responsibility.

II. *Intellectual Aptitude.*

7 or 1. Application and maximization of the precedential test of appropriate aptitude, viz. appropriate examination.
8. or 2. Minimization of factitious remuneration.

ENGLISH GOVERNMENT.

I. *Moral Aptitude.*

1. Sacrifice of people's interest to rulers' interest.
2. Maximization of rulers' power.
3. Maximization of money at rulers' disposal.
4. Maximization of rulers' pay.
5. Minimization of legal responsibility.
6. Minimization of moral responsibility.

II. *Intellectual Aptitude.*

7. or 1. Non-application of the precedential test of appropriate aptitude, viz. appropriate examination.
8. or 2. Maximization of factitious remuneration.

* See vol. vii. p. 420 and note.

III. *Active Aptitude.*

9. or 1. Maximization of official attendance.

IV. *All Branches taken together.*

10. or 1. Maximization of the collation and publication of appropriate facts and judgments, indicative of official aptitude or inaptitude.
11. or 2. Maximization of publicity of official obligations.

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11. or 2. Minimization of publicity of official obligations.

In defence of the system of misrule as at present carried on in England, a plea in bar against reform, and a plea that seems to be most generally employed and relied on, is—that the system that has place now, is the same as that by which all the good effects that have ever been experienced have been produced: the same on which all the praises that have ever been bestowed upon it by foreign nations as well as its own, have been bestowed.

If things themselves are to be considered, and not mere words—the things themselves and not merely the words employed in speaking of them, nothing can be further from the truth. The assertion, if it be anything to the purpose, amounts to this: viz. that, to the power exercised by the ruling one, in conjunction with the sub-ruling few, once the subject many, there exists at present checks and securities against abuse, either the same as, or not less effectual than, any which ever had place at any former point of time.

This will be found completely false and groundless, whether the power of aggression on the part of the one and the few be considered, or the power of self-defence on the part of the many.

On the part of the rulers the power of aggression may be distinguished into the power of violence and the power of corruption: on the part of the subject many the power of self-defence may be distinguished into that which they exercise by their representatives, meaning always their actual deputies and delegates freely chosen by them, and that which they exercise by themselves.

First, as to the power of aggression by violence. It consists in, and in its amount is proportioned to, the standing force of a military nature under the absolute command of the ruling one. Of this force there are two branches: the land force and the sea force. For the period of comparison take, in the first place, the year 1753, being the fifth year after the war that terminated in the peace of 1748.

Army in 1753, 20,000. Army in 1821, 100,000.

Navy in 1753, 15,000. Navy in 1821, 60,000.

So far as aggressive power is concerned, to say that it is no greater now than it was in 1753, is to say that one hundred thousand is no more than twenty thousand: or that sixty thousand is no more than fifteen thousand.

The more assured the influence and efficiency of those causes, by the force of which, in every government, the ruling functionaries are, on each occasion, prompted and urged to concur in the making of the sinister sacrifice, the more strenuous and universal will of course be the endeavours to conceal from the eyes of all who do not participate in the benefit of it, the existence of the sacrifice itself, and thence the existence and the efficiency of the motives which on each occasion give birth to it. By action (if sufficiently observed) the demonstration afforded by it is on every occasion complete: for producing disbelief of the existence of it—for preventing men from descrying motives through the medium of actions, remain as the only resource which the nature of the case furnishes or admits of—*professions*. In this case the actions constitute the circumstantial evidence, and professions—mere words, the direct evidence. The circumstantial evidence by which the existence of the sacrifice, and the part borne by each man in the making of it, is demonstrated, being conclusive, nothing is left but to abuse the ears, and if possible, blind the eyes and confound the understanding, the conception, and the judgment, by an all-embracing, and indefatigably, and vehemently urged body of this same direct evidence: evidence which in every instance is mendacious. But the mendacity of it not being in its nature capable of being rendered perceptible to sense—perceptible to the bodily organs of those addressed in the character of judges; hence it is that it ever has been in the most unblushing manner obtruded, and will so continue to be to the very last.

For this purpose, not inconsiderable is the variety of phrases; as common as any is *purity of motives*. By this phrase what is meant to be insinuated is, either that in the part the man takes he has no regard whatsoever for his own personal interest, or any other narrow interest, or that if he has any, it gives way at all times to his regard for the national or some other more extensive interest. But preferably the meaning is, such being the more direct and obvious import of the words, the utter absence of every particle of self-regard. Of this immaculate purity, each man in the most peremptory manner asserts the existence in his own instance: deny it, or hesitate to admit it, you offer him an affront—an affront, the stain of which he perhaps not unfrequently invites you to permit him to wash away with your blood. Of this same purity he calls upon

you, though perhaps in a tone not quite so loud, to admit, on the part of his colleagues and supporters. Nor yet, unless under the smart of some particular provocation, or in the ardour of some particularly advantageous thrust, is he backward in the acknowledgment of the same purity in the breasts of honourable gentlemen on the other side of the house. By this means while the praise of good temper and candour is obtained, the price for the purchase of the corresponding acknowledgment on the other side, is thus paid in advance.

No government so corrupt but that it is in the habit of receiving acknowledgments of this sort from its opponents. Nor are these acknowledgments inconsistent with the rules of policy. For if the position were—all is impurity on that side, all is purity on our side,—people might be found to doubt of it, especially in those instances in which the very same men have been seen sometimes on the one side sometimes on the other: and in that case the result might be, in some eyes, a rational supposition of its non-existence on either side.

At the expense of truth (need it be said?) is all this laudation and self-worship, every atom of it. But the more irrefragably true is the contrary position, the more strenuous is the urgency of the demand for it. Thus it is, that urged by the necessity which on all sides they are under of making men in general continue in the belief of the non-existence of that which they are seeing and feeling the effects of at every moment, public men join in the inculcating of the errors correspondent and opposite to the most important truths: in causing men to believe that, under a form of government so thoroughly corrupt, that all who belong to it are in a state of corruption—none are: to believe in that fabled purity which is not ever true even where temptation is at its minimum, much less in a situation in which it is at its maximum.

This being the language of ruler-craft, what is the language of simple truth? That in spite of everything which is *said*, the general predominance of self-regard over every other sort of regard, is demonstrated by everything that is *done*: that in the ordinary tenor of life, in the breasts of human beings of ordinary mould, self is everything, to which all other persons, added to all other things put together, are as nothing: that this general habit of self preference is so far from being a just subject of denial, or even a reasonable cause of regret, that the existence of it is an indispensable condition not only to the wellbeing but to the very being of the human species, and should therefore be a cause of satisfaction: that admitting, as perhaps it may be admitted, that in a highly matured state of society, in here and there a highly cultivated and expanded mind, under the stimulus of some extraordinary excitement, a sacrifice of self-regarding interest to social interest, upon a national scale, has not been without example—public virtue in this shape cannot reasonably be regarded as being so frequently exemplified as insanity: and that as in the case of insanity so in this,—it is in what has place in the conduct on the part of the thousands, and not in what has place in the conduct of one in every thousand, that all rational and useful political arrangements will be grounded.

Of a state of things thus incontrovertible, no sooner is the existence to a certain degree extensively acknowledged, than all pretence to this species of purity will be regarded as would an assertion of chastity in the mouth of a prostitute at the very moment of solicitation: regarded as an insult to the understandings of all those to whom it is addressed,—and will as such be resented.

Partly through artifice, partly through blind imitation, almost every sort of document, by which right instruction ought to be administered, is regularly and constantly employed in the drawing of those flattering pictures of human nature: flattering in so far as that disposition is ascribed, by which if really possessed in the degree in which it is represented as possessed, the destruction of the whole species would be the consequence. These pictures of human nature are drawn without any determinate and declared line of distinction, yet so ordered, that the favourites of fortune are the only individuals that have the benefit of it.

In all histories, in all biographies, in all funeral sermons, in all obituaries, is praise poured out with the most boundless, and indiscriminating profusion, upon those who howsoever spoken of while living, are thus richly compensated when dead. That for fortune's favourites alone is the praise destined—that by them alone it is, or can be invoked, is not expressly said: yet so it is, that to none other, can any part of it ever have application.

Thus it is that in all these documents, honour and praise bestowed, operates as a bounty upon oppression and depredation, as an encouragement to persevere in all those courses by which human misery on the largest scale is produced.

It is from the same pernicious artifice that the adage—"of the dead say nothing but what is good," has its source: *i. e.* give on every occasion false and delusive instruction, in the most important of all branches of art and science: instruction by which the few may be engaged to commit oppression and depredation in every shape, and the many engaged to submit to it.

Tender in their sympathy for those who have no feeling: callous to the sufferings of all those who are exposed to suffer from the crimes of their confederates.

This doctrine is inculcated in all seats of instruction, in every monarchy. To his disadvantage, nothing: to his advantage, anything. Thus, bating a few exceptions, the portrait presented by the aggregate of these documents, is that of universal excellence. Not that by

the word excellence, anything approaching to the character of a distinct idea, can be ever presented: all that is presented, is a something by which the individual is constituted a fit subject of admiration and consequently of imitation. But these so fit subjects of admiration and imitation, to which class do they belong? Uniformly to that class, by which all the mischief done in the world has been done: while those who never come in for any share of this admiration and this praise, are with a few exceptions as before, of the class of those, by whom at the same time, whatever good has been done, has been done.

In the labouring—the productive class, life in its general tenor, is a life of beneficence: whatever maleficence has place forms the exception, and in comparison with the beneficence, those exceptions are extremely rare. By the produce of his labour, he procures his own subsistence, and contributes to that of the family to which he belongs: in so doing, he contributes at the same time to his own gratification: for by the constitution of human nature, gratification is inseparably attached to those operations by which the individual—and hence by which the species—is preserved. At the same time to an indefinite amount, according to the nature of his employment, he contributes to the gratification of others in abundance: others by whom no such contributions are made to the general stock of felicity. By him, no mischief is done: no depredation committed—no oppression in any other shape, committed.

Not the smallest particle of that praise and admiration ever falls to the share of this uniformly beneficent class. So far from being objects of respect or sympathy, they are objects of contempt and antipathy: they serve but as foils, to the receptacles of all excellence.

Here, then, are two distinct and opposite classes: the one composed of those by whom the disagreeable sensation, called disgust, is constantly experienced: the other composed of those who are the objects of it—those from whom it is experienced. But those from whom it is experienced, are undoubtedly, in a physical sense, comparatively *impure:* the quality, on account of which they are the objects of disgust, is impurity: while the opposite agreeable quality is among the incontestable attributes of those by whom they are contemplated in this point of view. But by those by whom everything is produced, small indeed in comparison is either the time or the money that can be afforded by them in freeing themselves from impurities:—never sufficient for the satisfaction of those, their superiors in the scale of fortune.

Unfortunately of the appellation *impure*, in the case in which it is with propriety applied to the productive classes, the propriety is much more obvious and incontestable, than in the case in which, it is with so much less propriety applicable to those same classes, namely, in the moral sense,—while it is with so much more propriety applicable to the unproductive classes. If a man be covered with dirt, you see it in a moment by a glance at his face. But if he be a man, who, after sacrificing to his own gratification the subsistence of 100,000 human beings of the productive class, is still running in debt, disdaining to apply a bridle to that rapacity by which he is urged to go on, in the same sinister sacrifice, so long as an obtainable particle of it remains unsacrificed—nothing of this do you see in his face, or in anything about him; on the contrary, you see him encompassed with trappings, the object of which, (and in but too great a degree the effect,) is to cause you to regard him, not as being distinguished by any of those mischievous qualities, by which he is so pre-eminently distinguished,—but as one who is pure of all those qualities, from the effects of which, suffering, in various shapes, to other individuals, is derived.

To the devising of any well-grounded and rational course, for the surmounting of the obstacles opposed to good government, by the universal self-preference in the breasts of the functionaries of government—of the constituted guardians of the universal interest—the first step was the taking a true observation of the existence and shape of that same universally prevalent, particular, and sinister interest. This theory being accomplished, correspondent and accordant practice becomes a matter of course. Hence, into the compass of these two words, may be condensed the all-directing and leading rule—*minimize confidence.* Such, then, is the advice which the framer of this constitution has not been backward in giving to all who are disposed to accept it. Confine within the strictest limits of necessity, whatsoever confidence you may be tempted to repose either in them or their successors.

At the same time, here as in a watch, does this main-spring require another to antagonize with it. Of all constituents be it, at the same time the care, from no delegate to withhold any of that power, which may eventually be necessary to the due performance of the service looked for, at his hands. While confidence is minimized, let not power be withheld. For security against breach of trust, the sole apt remedy is,—on the part of trustees, not impotence, but constant responsibility, and as towards their creators—the authors of their political being—on every occasion, and at all times, the strictest and most absolute dependence. In the first place with powers no otherwise limited, on the part of the Supreme Legislative, the most absolute dependence on the Supreme Constitutive, and thus in a chain reaching down to the lowest functionary: each link, through the medium of the several increasing links, in a state of equally perfect dependence on the Supreme Legislative, and by this means on the Supreme Constitutive. If

the Supreme Constitutive were in a single hand—in the hand of a monarch, no objection would there be, on his part, to this chain of dependence: nor on the part of any of those who, that the many may be dependent on them, are so well content to be dependent on that one. Can it be said there is less reason for content when the few are thus dependent on the many?

With the maximization of beneficial power, to reconcile and embrace the minimization of maleficent power, lies the great, not to say, the only difficulty. For surmounting it, the course here taken is—the keeping throughout the whole field of action, in the hands of the many, the faculty of dislocating the possessors of operative power—in the hands of those by whom, and in so far as, maleficently exercised, the suffering thus produced will be felt.

In vain would the efficiency of the course, here recommended, be questioned, or its alleged dangerousness asserted and magnified. For a complete demonstration of its efficiency, as well as its undangerousness, one and the same example has already sufficed. This is that of the Anglo-American United States. In essentials, the principals by which the arrangements in the constitution of that confederacy have been determined, are the same, it may be seen, as those here laid down and applied. Of that constitution, the fundamental principle is the omnipotence of the many: the omnipotence in so far as established by the constitutive power, though not a particle of the operative power can be seen lodged in those same hands.

By the adoption and application made of this principle, while an unexampled quantity of good has been produced, and evil, in the shape of evil, from misrule excluded,—not a particle of the alleged mischiefs or dangers has ever been seen to result: while the evils, which, for want of this safeguard, have, at the same time, as well as in all former times, been produced in all other governments, are and have been, multitudinous, intense, and incontrovertible; and are destined to go on increasing, till the governments themselves are dissolved.

Not that even in this hitherto matchlessly felicitous system, imperfections of detail are wanting: witness the still unabrogated sanction given to domestic slavery on account of difference of colour, and the misrule submitted to at the hands of the lawyer tribe, for want of an all-embracing and determinate rule of action: not to speak of a quantity of useless and thence mischievous complication, by which the transparency of the system still continues to be disturbed. But in these imperfections there is nothing that flows from the abovementioned fundamental principle: nor yet any evil that may not be seen in still greater abundance in those other states, in the constitutions of which this principle has no place. Neither is there any evil, which, without any change in the constitution, might not receive, and beyond doubt is destined sooner or later to receive, an easy cure; while to the evils resulting from the constitutions of all other states, no cure can by possibility be effected by any other means, than the abrogation of those constitutions, and substituting the sort of constitution, of which it is the characteristic to have for its fundamental principle, the omnipotence of the many, as above.

At the same time, men being the same everywhere, not less universally exemplified is the principle of self-preference in that, than in every other form of government. But where the government is in the hands of all, or what comes to the same thing, of those whose collective interests are the same with the interests of all, the natural effect of the principle of self-preference is—not as in the case where it is in the hands of one, or of a few, the sacrifice of the interest of all, to the interest of that one or those few; but the sacrifice of all interests that are opposed to the happiness of all. In so far as his aim is, to sacrifice all interests to his own,—the interests of others, to that which is peculiar to himself, no man finds any effective number of hands disposed to join with his: in so far as his aim is, to serve such of his interests alone, as are theirs as well as his, he finds all hands disposed to join with his: and these common interests correspond to the immediately subordinate right and proper ends of government, maximization of subsistence, abundance, security, and equality. In so far as by the principle of self-preference, he is led to promote his own happiness, by augmenting theirs at the same time, or even without diminishing it, so far he finds himself capable of acting without obstruction: but no sooner does he attempt to promote his own happiness, by means by which theirs is diminished, than he finds obstruction thrown in his way, by all whose happiness is, by this his enterprise already more or less diminished, and by all who, in case of his success, are apprehensive of suffering the like diminution. Thus, then, the principle of self-preference, has for its regulator in the breast of each, the consciousness of the existence and power of the same principle in the breasts of all the rest: and thus it is that the whole mechanism is at all times kept in a state of perfect order, and at all times performs to admiration everything that is desired of it, everything it was made for.

As to professions, and boasts of purity of motives; in the debates and discussions that have place in those United States, little or nothing of this sort of talk is heard. Why? Because, in the first place, there is no such demand for it: in the next place, there would be no use for it, for there would be no prospect of its gaining credence.

No such demand: for by no functionary, or set of functionaries, is any such power there possessed as that of exercising depredation or

oppression in any shape—that of making of the interests of others, any such enormous sacrifices, to his own particular interest, as are made under all other governments,—any such power, nor consequently, any such habit. The sinister interest not being proved by his actions, there is no such circumstantial evidence, calling for direct evidence to furnish a disproof of it.

No credence would any such profession obtain if uttered. In a monarchy, while producing its effects in the way of corruption on the self-styled agents of the people, the matter of good above-mentioned, in their hands, and thrown round their persons, is producing its effects in the way of delusion upon the people themselves. Full, they are seen to be of money, power, and factitious dignity: proportionably full, under favour of the delusion, they are believed to be, of excellence. As of excellence in general, so of excellence in the shape of sincerity in particular: so that, when they say their motives are so pure, their regard for the interests of the people so intense, their disregard for their own interests so entire, the assertion of all these impossibilities, impossibilities as they are, is not the less followed by belief.

But in those United States, no such source of delusion has place: no man, whose impudence has soared to any such pitch, as to make pretension to any such excellence. By inward consciousness, each man stands assured of the dominion of the principle of self-preference in himself: by analogy, receiving continual support from experience, each man stands equally assured of its existence in the breast of every other man. No man, therefore, sees any advantage in coming forward with pretensions, which, if made, would be productive of no other fruit than scorn and ridicule.

By nothing which is to be found in that example, is any contradiction or exception applied to the rule, by which the greatest happiness of the rulers themselves is asserted to be the end in view of all rule: why? for this simple reason,—the supreme rulers themselves, are those, whose interests are not decidedly distinguishable from those interests of which the universal interest is composed.

Whatsoever moral considerations,—notions of moral obligation,—should induce a man to abstain from acts injurious to individuals, or to the community in the aggregate, and to oppose himself to acts of the like tendency on the part of the other individuals, or of foreigners, considered in the character of enemies, should urge him to the like conduct as against the correspondent acts of misrule, on the part of the government, and as against the form and system of government which gives birth to them. So much with regard to direction: then as to force and energy. In the case of the public wrong, the resistance ought to be as much as it is in the case of the private wrong, as are the number of the sufferers in the two cases; in other words, as the mischief done by the public wrong, is to the mischief done by the private wrong.

CHAPTER X.

CORRUPTION.

Taken in its largest sense, the word *corruption* is employed to denote the deterioration of the subject to which it is applied,—the rendering it worse than it was before, or would have been otherwise. *Corruptio* is in Latin, *breaking up:* the breaking up of the texture of the subject in question: it being understood that, by such breaking up, it is rendered worse. In the first instance, the word was used in a physical sense: the breaking up the texture of a mass of animal or vegetable matter; from thence, it comes to be used in a moral sense,—the breaking up for the worse, the texture of the mental frame.

When the sense in which the word is used is the physical sense, no more than one object is necessarily considered as having place in the operation: namely, the corruptible mass in which the change has place: by another object, operating in the character of a ferment, the change may be promoted: but no such exterior object is necessary to it.

Where the sense in which the word is used is the moral sense, the idea of two objects at once is commonly presented by it: the part in which the one appears, an active part; the part in which the other appears, a passive part. The objects thus presented to view are commonly persons. In this case what is presented to view, is an operation in which two persons are concerned: one the agent in the operation, corrupting the other, and thereby rendering himself a corruptor: the other, the patient in the operation, being corrupted by the former, and by the having been so corrupted becoming and continuing corrupt.

Thus it is, that an operation called *corruption* has been performed: and by the same word *corruption*, the result of the operation—the state of things brought about by it—is designated.

In the operation thus described, by the party corrupting *corruptive influence* has been exercised: by the party corrupted, say in one word, (on the plan mentioned and recommended by Blackstone,) the corruptee—*corrupt obsequiousness* has been practised.

In the idea thus brought to view, is also commonly comprised that of an auxiliary agent, considered as being employed as an instrument by the principal one. This instrument is a quantity of what may be termed the matter of corruption, employed in that same character of an instrument. Applied in the physical sense, and to a physical subject, this instrument is what is called a *ferment*.

This matter, employed as an instrument to act upon the mind, if it operates, it is in the character of an inducement that it operates.

An inducement is constituted either of the matter of evil or of the matter of good, operating on the mind in those their respective characters.

An inducement, to which the name of corruptive might without impropriety be attached, is an inducement of the intimidative kind. Say, for example, the fear of death: intimation being given, that if the party meant to be corrupted will not do the sinister service desired at his hands, he shall be put to death, —in the opposite case, not.

An instrument of this sort is not, however, the sort of instrument, the idea of which will, by the words, matter of corruption, instrument of corruption,—be in general most apt to be excited. Not a portion of the matter of evil, but a portion of the matter of good, is the sort of instrument, the idea of which will, by any such appellations, in general be apt to be excited.

This matter of good will be some portion of the matter of which the external instruments of felicity are composed, namely, power and wealth, with or without the addition of factitious honour or dignity.

In regard to corruption, the first grand distinction is, the distinction between that which is designed, and that which is undesigned. By undesigned, understand that which is capable of having place without design, not that which is not ever, in any instance, the result of design: for of that which is capable of having place without design, there is not any portion but what is not altogether capable of having place with and by design, and is abundantly in the habit of being so produced.

Suppose the creation of it the work of chance: nothing is more natural than that the preservation of it shall be the work of design.

The corruptive influence by which, in the case of bribery, an elector of a representative of the people in a mixed monarchy is engaged to give his vote in favour of a candidate by whom, or by whose agent, money is given for it, is the work of design. On the other part, the corrupt obsequiousness is accompanied with a consciousness of the nature of the corrupting inducement to which it is indebted for its existence. The corruption, in consequence of which the representative perseveres in giving support to the measures of the monarch, in that same monarchy, for a course of years, notwithstanding any depredation and oppression of which those same measures are all the while productive, may by possibility, be produced on the one part without any such design, and on the other part without any such self-criminating consciousness. The monarch, in his quality of chief executive functionary, must have subordinates, in the several situations, with large masses of emolument attached to them. The representative, seeing that these situations must have place, and thinking that the masses of emolument attached to them must have place, thinks that of these good things the possession and enjoyment may as well be in his hands as in any other's. The monarch is kind and bountiful: in return for kindness and bounty, the moral and the religious sanction join in commanding gratitude: and thus it is, that without design of evil on the one part, or consciousness of it on the other, corruption may do its work, and evil, to any intensity, extent, and duration, be produced.

Corruption may also be distinguished into personal, or say personally seated, and systematic, or say systematically seated.

By the case in which it is personally seated, understand the case in which a determinate individual is assignable, by whom a portion of the matter of good, constituting the temptation, has been presented to the view of the individual at whose hands the sinister service was desired, and the bait accordingly swallowed, and the sinister service rendered. In this case stands the transaction between the candidate and the elector, as above. By the case in which the corruption is not personally but systematically seated, understand the case in which no such individual is assignable, but the cause of the corrupt transaction—the source of all transactions of the same nature pervading the whole official establishment, is in the system or frame of government.

A system of government in which an irremoveable functionary possesses an indispensable share in the supreme legislative power, and at the same time the whole or the greatest part of that branch of the supreme executive power, by which the subordinate functionaries are placed, and, in a proportion more or less considerable, displaceable, is a system in which corruption is systematically seated. On the one part, the corruptive influence of the chief functionary, on the other part, the corrupt obsequiousness on the part of the people's representatives, has its source, not in the mental texture of this or that individual, but in the political texture of the system or frame of government itself. It will therefore, of necessity, go on in the production of the fruits of corruption, namely, depredation and oppression, in a quantity continually increasing, unless, and until the form of government receive an apt and adequate change.

Obsequious dependence is produced by fear or hope: fear of eventual evil, or hope of eventual good.

Dependence by the tie of fear is generally most effective: the greatest evil which a dependent is capable of receiving at the hands of a superior being more than equal to the greatest good. Suppose the degree of probability of the result to be the same, the same sum produces more effective dependence by the fear of losing it, than by the hope of gaining it: punishment, by the fear of losing it

produces a dependence more effective, than reward, by the hope of gaining it.

Under the English form of government, all desirable offices, without any exception worth taking into account, being in the gift of the monarch, and to the greater part of the extent, the power of dislocation being, in relation to those same offices, also in his hands,—hence, on the part of all other members of the community, dependence, more or less effective, has place universally. The interest of this one member being opposite to that of all the rest, it is his constant desire, and correspondent endeavour, to cause them to support his interest at the expense of theirs. Thus, under that form of government, corruption is all prevalent on the part of those who possess, and those who look to possess, a share in it. And whatever may be the variation in degree, as in that, so is it, in this respect, in every other limited monarchy.

One great misfortune attendant on the use made of corruption and delusion is, the extreme facility with which the fabrication of these instruments of misrule is attended. Force and intimidation are not applied without special and strenuous exertions on the part of possessors of power, specially directed to the production of obsequiousness—the desired effect. Corruption and delusion are produced by them not only without any strenuous exertions, but without so much as any expense in the article of thought: are produced by them just as well when asleep as when awake.

To exercise corruptive influence to any amount—to produce corrupt obsequiousness to any amount, it is not necessary that either endeavour, or so much as desire so to do, should have place in the mind of the ruler. All that is necessary, is, the desire and the endeavour, which in his situation is of course followed by accomplishment,—the endeavour to produce, and of course the production of, waste. In a word, all that is necessary to him is, on every occasion that presents itself, to yield to the appetite for money in his own breast, or in the breasts of any individual or individuals connected with him, in the way of interest or sympathy: for the purpose of their individual gratification the money is put into their pockets: thereupon, by the eventual expectation of the like benefit from the like source, corruptive obsequiousness is produced in the breast and conduct of ten, twenty, or perhaps fifty times, as many breasts as those in which the gratification attached to the receipt and expenditure of the money, was produced.

In itself corruption is no evil, for neither is the receipt, nor the conferring of a benefit, in any shape an evil; in so far as it is an evil, corruption is so, only in respect of the evil effects produced by it: abstraction made of those effects, it is even a good.

To prevent here and there an insulated breach of trust, effected by means of remuneration, is impossible; but to prevent the evil effects of corruption from having place to any such amount as to be perceptible on a national scale, is possible.

In a limited monarchy, corruption by intimidation *at large*, cannot have place to any considerable extent: the intimidation and the consequent suffering would extend to those by whose power the limitation to that of the monarch is applied. They would call in the power of the people to their aid, and make a change either in the form of government, or in the person of the chief governor and his family, or both.

The case in which corruption by intimidation is capable of having place, is therefore reduced to that in which corruption by intimidation is connected with corruption by remuneration: the state of intimidation in question having for its efficient cause, the fear of losing a benefit, which has proceeded from the intimidating hand.

Such then will be the effect of the universally applying dislocative power here proposed to be vested in the people, in their quality of members of the constitutive authority: it will be an effectual preventive of depredation, and oppression in every other shape, at the hands of rulers. It will not indeed operate as a completely effectual preventive of corruption in the shape of corrupt remuneration in particular instances as above; but, so few will be these instances, and the evil effects, if any, so inconsiderable, that in a national point of view, they may be regarded without much regret by the most anxious lover of mankind.

Suppose that in the instance of this or that office, the choice made of the functionary by the patron, as between C, a corruptor, (in whose favour the matter of corruption has been employed,) and N, a non-corruptor, (in whose favour no matter of corruption has been employed,) has been determined by the giving of a daughter of C's, in marriage to a son of the patron's, with a fortune greater than would have been given otherwise: C and N, being exactly upon a par, in respect of appropriate aptitude. In this case the corruption has place, but by the supposition no ill effects whatever are among the results of it.

Suppose now, that though neither of the candidates be to any such degree *absolutely* unapt, as that any determinate ill effects should be seen to result from their want of aptitude, in such sort as to be neither of them perceptibly *below* par in the scale of aptitude,—yet one of them there is, to whom, though *above* par in the scale of aptitude, the one who is *not* above par, has been preferred. This is the sort and degree of corruption, against which neither the universally applying dislocation in the hands of the constitutive, nor this, in addition to all remedies whatsoever, which the nature of the case admits the application of, can ever operate as a completely adequate preventive. But so long as the effects of corruption rise not above this height, neither

the framer of the constitutional code, nor any spectator of it, need feel much dissatisfaction at the contemplation of the work.

Corruption may be understood in a more extensive sense, namely, by being considered as designating the matter of good or evil, operating on the mind of an individual in such sort, as to cause him in contemplation of a less good to forego a greater, or by the contemplation of a less evil to subject himself to a greater, or by the contemplation of a less evil to forego a greater good.

Thus when Esau, as in the history, sold his birth-right for a mess of pottage, thus sacrificing to a lesser present, a greater future interest, his will may on this occasion be considered as having been governed by corruptive influence: and the portion of the matter of corruption by which the effect was produced, was, in this case, the mess of pottage.

In a word, whosoever the party is, to whose happiness reference is made by the word good, every case in which the lesser good is embraced in preference to the greater, or even the greater evil in preference to the less, may be considered as a case in which corruption, or say corruptive influence, has had place, and has in such sort operated, as to have given birth to the sinister effect.

An elector, who by his vote should contribute to the establishment of a constitution having for its effect, instead of the greatest happiness of the greatest number, the greatest or supposed greatest happiness of the ruling few at the expense of the happiness of the many, would, supposing himself to become in consequence of the misrule, a sufferer to a greater amount than that of the benefit received by his vote, be an Esau selling his birth-right for a mess of pottage.

Look to a man whose situation places him under the temptation above described,—see him putting into his pocket the reward thus proffered by it,—conceive him standing up and saying—never from either the prospect or the receipt of this reward, has my conduct ever experienced any the slightest influence,—a declaration to any such effect can it, in the instance of any man which ever breathed, have presented any so much as the slightest claim to credence? Yes: if,—when for the obtainment of legal evidence of a capital crime, pardon, together with a thousand pounds reward, has been offered to any partaker in the crime who, with the effect of producing the conviction of a fellow criminal, will repair to the judicatory and give his narrative of the case, if, in the course of his narrative he should take upon him to say—neither by the assurance of receiving the thousand pounds, nor by the assurance of saving my forfeited life, am I influenced by the statement I am now giving,—if, with a protestation to this effect in his mouth, the malefactor could present any claim to credence.

If, to assurances to this effect, protestations were added,—if, to protestations, eyes lifted up to heaven,—if, to eyes lifted up to heaven, summonses to God to come down and bear witness,—if, to summonses to God to bear witness, tears,—if, to tears, faintings were added; to the claim made by the simple declarations, would any additional claim either in the case of the chancellor in office or out of office, or in the case of the minor malefactor, be made to credence? Yes; if by his display in the character of Iago, Mr Kean calls him from the grave, calls the dead to life, and transforms himself into that personage.

By the common name of corruptionists, corruptors and corruptees may both of them be designated. By the use of this common appellative, the difficulty and obscurity attached to the operation of ascertaining, which of the two parts was, on this or that occasion, acted by the individual or individuals in question, may be avoided.

Everywhere, the whole official establishment, is a corruptive establishment: to possess the sinister benefits of corruption, is the universal wish.

But, without their own pale, the members of the official establishment have, in their quality of corruptors, or would-be corruptors, their accomplices, and in the natural course of things, their confederates. These are the several classes of which the aristocracy of the country is composed.

They have, all of them, that which is sufficient to make them so: the particular and sinister interest, and the situation in life, which gives them (such of them as are not rulers) the faculty of serving by confederacy with such as are rulers, that same sinister interest.

Of the expense of government, every part which has for its effect or its object, the affording to the few gratification in which the many cannot participate, is so much of the corruptive fund employed in gaining over the aristocratical classes, and obtaining their support and assistance in the depredation and oppression exercised on the many.

To the other ingredients of the corruption-fund may be added, everything that goes by the name of grace and favour: admission to places to which others would not be admitted: admission to more convenient or more honourable situations in places in which persons in general are admitted: opportunities of purchasing this or that object of desire with more certainty, or upon terms more advantageous, than those on which persons at large can obtain them.

Corruption has place where, by means of some benefit to himself, a functionary is made to violate his trust.

On this occasion, the following points must be considered, namely:—

1. The sinister effect produced, viz. mischief in some shape or other to the public service.

2. The nature of the benefit, or say, the sinister benefit, received.

3. The person corrupted,—say the corruptee.

4. The hand by which the sinister benefit is received, namely, the corruptee's own or some other.

5. The person benefited by the sinister effect —say the corruptor.

6. The immediately corrupting hand by which the sinister benefit is applied.

7. The relative time at which the sinister benefit is received: relation had to the time at which the sinister effect is produced: namely, consequent or antecedent.

8. The motive by the operation of which, on the mind of the individual corrupted, the corruption, and thence the sinister effect, is produced.

1. As to the sinister effect of the corruption: This considered in its general complexion, is violation of the trust in question: of the trust, correspondent to the power, with which in virtue of his office, the functionary on whom the corruption operates, is invested; or if the functions be no other than such by the exercise of which no power is exercised,—the duties attached to the situation of the corruptee. The object here proposed, being the keeping as far as possible excluded, corruption wherever it is liable to have entrance, or at any rate the keeping excluded as far as possible whatever evil effects it is pregnant with, the effect must to this purpose be presumed to be in every case, evil: in what particular shape, will depend upon the particular nature of the function attached to the office whatsoever it be, and the correspondent trusts or duties of which the violation is produced.

2. As to the nature of the benefit. This may be good in any of its shapes. The matter of corruption is accordingly the matter of good in any of its shapes, considered as employed to this sinister purpose. For examples of the shapes in which the matter of good is at the disposition of governments or individuals, take the several external instruments of felicity in all their shapes: including money, power, factitious dignity, ease at the expense of official duty, vengeance at the expense of justice.

In the idea of good in all its shapes, is included the idea of evil in all its shapes. How so? Because whatever be the shape in which it is possible for evil to show itself, the exclusion or removal of it, is a correspondent good: and in the same way, under the idea of evil in all its shapes, is included the idea of good in all its shapes.*

Good may accordingly be divided and distinguished into positive and negative. Positive good, is good not consisting in the absence or removal of evil: negative good is good consisting in the exclusion or removal of evil.

Punishment may therefore in this way be made and accordingly is made an instrument of corruption. Give a man to understand that if he will not render the sinister service he will be punished; but that if he does render it, he shall remain unpunished: the non-application of the punishment has the effect of reward. Where the instrument is in both cases the same, as in the case of money, and the magnitude of it equal, the actuating force of punishment is much greater than that of reward. Aggregate value of a man's property say £100. Give him £50, you do not produce near so much enjoyment, as you do suffering by taking from him that same sum: the ratio of £100 to £50 is twice as great as the ratio of £150 to £100. Give him £100, still further are you from producing on his part as much enjoyment as you would suffering, by taking from him that same sum: you in this case take from him his all: scarcely by giving him £1000, would you produce so much enjoyment, as you would suffering by so stripping him. Man is susceptible of pain in greater quantities than pleasure.

Considered as forming part and parcel of the matter of corruption, a benefit requires to be distinguished into that which is *irrevocable* and that which is *revocable*. In the case where it is irrevocable, the effective, or say corruptive, force with which it operates, is that only which belongs to it in the quality of matter of reward. In the case in which it is revocable, the corruptive force with which it operates is that which belongs to it in the character of matter of punishment. By giving to a man an eventually permanent benefit, of which you reserve to yourself the power of depriving him at pleasure, you invest yourself with a power of inflicting punishment—you place him in a state of dependence and subjection to that same power. As to the creation of such a power, it is an evil altogether inevitable: for without power of dislocation on the one part, and dislocability on the other, no tolerably efficient security for appropriate aptitude on the part of subordinates, can be established. But for excluding the abuse of it no securities which the nature of the case admits of can be superfluous.

To this head belongs the case of *pardons*, and the exercise of mercy, which has been considered elsewhere.

3. The corruptee: namely a public functionary of any grade in any department, at whose hands the sinister service is thus obtained: whether his function has *power* in any shape attached to it or not.

4. The immediately receiving hand—the hand by which, without the intervention of any other, the sinister and corruptive benefit is received. This may be that of the corruptee or any other: of any other person whatsoever, if connected with the corruptee by any tie of self-regarding interest, or though it be but sympathetic interest. For example, a son of the corruptee, or any other person who is in such sort in the dependence of the corruptee,

* Good and evil being opposites, what is predicated of each way, by an appropriate change in the wording, by with equal truth and propriety predicated of the other: and so with regard to reward and punishment.

that but for the sinister benefit thus received, the corruptee would, at his own expense, have had to make provision to the same or any part of the amount. Or even an ever so-perfectly-independent friend; for so long as sympathy has place between man and man, the sinister effect of corruption may be produced as fully by a benefit conferred on a person other than the corruptee, as by a benefit conferred on the corruptee himself.

This or that man who would not be won by a benefit offered to him for himself, might be won by a benefit, especially if conferred in a manner called *handsome*, on a friend.

5. Corruptor or corruptors: parties by whom the benefit from the sinister effect is reaped.

On each occasion these may be distinguished into special corruptor or corruptors, and corruptor or corruptors-general. Special corruptors are those by whom the benefit on the occasion of this or that individual transaction is reaped. Corruptors-general are those by whom the benefit from the whole system of corruption taken in the aggregate is reaped.

In every political state the whole body of public functionaries constituting the supreme operative, require to be considered in the character of corruptors and corruptees: at the best, they are at all times exposed to the temptation of being so, and in a greater or less degree are sure to be made to yield to that temptation. In a republic the sinister effect of that temptation is capable of being confined within bounds—within such bounds as will exclude all practical evil. Under that form of government the constitutive authority is placed over the supreme operative, with dislocative power with relation to it, as well as locative.

Between the corruptors and the corruptees, the distinction is not very easy to trace out and delineate. In an absolute monarchy, the corruptor and corruptee may be said to be one. For the monarch or corruptor-general has in one hand the whole mass of the instruments of felicity; and in the other, he lodges them all for his own use: sacrificing to his own expectation of happiness, the happiness of the people at large. But, as by his own hand alone no such sinister sacrifice could be made, hence the necessity he is under of applying more or less of the matter of good in his hands to the making of corruptees.

In the case of a mixed monarchy, the distinction shows itself most clearly.

6. The immediately corrupting hand:—the hand by which, without the intervention of any other, the sinister benefit is applied to the receiving hand. This may be the hand of him, by whom, on the particular occasion in question, the sinister benefit is received, or any other. With relation to the sinister effect, whether it be the one or the other, will of course make no difference.

7. The relative time at which the sinister benefit is received: namely, before or after the production of the sinister effect,—the rendering of the sinister service on the part of the corruptee.

Relation had to this point, the receipt of the matter of corruption may be said to be antecedential or consequential.

According as it belongs to the one or to the other of these two descriptions, the inducement, or say, the motive by which, on the part of the corruptee, the sinister service, the sinister effect is produced, is, it will be seen, of a very different description.

8. The inducement, or say, the motive or motives by which, on the mind of the corruptee, the sinister service and with it the sinister effect, is produced.

This will be altogether different, according as the receipt of the sinister benefit, in respect of relative time, is antecedential or consequential as above.

Of the two cases, the simplest is that where the receipt is consequential: in this case, the determining motive is expectation, or hope of the benefit in question. Where the receipt is precedential, the determining motive will generally be gratitude, and sometimes the fear of the reproach of ingratitude, or of perfidy.

If the views of the legislator do not comprehend corruption in all its possible shapes, as well or better might he leave it untouched altogether: for, whatsoever be the shapes to which the arrangements made by him do so extend, to those will it betake itself and operate with effect.

The two shapes or forms—the consequential and the antecedential, are apt to have place and operate together in the same case: indeed it is not often that they are found separate. In so far as they are separate, of that in which the remuneration is regarded as consequent to the corrupt service rendered, the efficiency is obviously much more assured and discernible. In this surest case, it is altogether by expectation that it is produced. From this one circumstance flow several important results.

To produce every bad effect of corruption, there needs not any special act of corruption. There sits a person who has good things in abundance at his disposal, and who has an interest in disposing of them in a certain way, namely, in favour of such persons as, by their agency, contribute to the accomplishment of a certain end. An individual observes what passes and acts accordingly. By his agency he contributes to that end: why? because in consequence and consideration of the doing so, he expects to receive some good thing or other, in the character of a reward. Whether at the hands of the person in question, he actually receives any such good thing, makes not to this purpose any difference.

In a certain state of things, to produce the effect of corruption, no corruptor, other than the corrupted person himself, is necessary. In virtue of a pre-established state or order of things, a sinister effect to the community at

useful, follows which lies the case arch without pre-establ- legal nat of the the expec- ssion is the ent. The d by ch the com- belief existence. office dispute- ver, a sidera- thus of be; av- the end ster, ber ging year ly; of te- nds are, and the of ed ame esses- a be wn the ol

to the greatest happiness of the greatest number: namely, by a judgment, which has for its cause sinister interest on the part of the aristocratical section of that tribunal, and relative ignorance on the part of the more numerous or democratical section. Gratitude at large, is a sentiment which, in every other breast, (not to speak of his own,) every individual, in proportion as he understands his interest, sees it to be his interest to cherish: in gratitude for past kindnesses, he will see the source of future ones. But for a misdeed, to the prejudice of the whole community, service rendered to an individual is no justification.

3. Fear of the reproach of *perfidy*. In so far as the acting in the way in question, towards the production of the sinister effect, is regarded as matter of moral obligation, in requital for the sinister benefit, the whole transaction on both sides being considered as forming the subject-matter of a contract, superadded to the reproach of ingratitude, will on this same occasion, be the reproach of perfidy. Men ought to requite services, is a general rule. Men ought still more punctually to requite services, when engaged for by contract, is another general rule. Unbounded in its extent is the benefit derived from the observance of both these general rules. Either of them would suffice for the destruction of society, were it not narrowed by certain exceptions. But the good from the observance of the general rule, meets the eye much oftener than does the evil from the non-observance of the exceptions. In whatsoever shape or degree an act is mischievous, an engagement to bear a part in the commission of it, does not do away the mischievousness of it.*

Great and nearly irresistible has been, and is but just ceasing to be, the influence of the members of the aristocratical section of the public-opinion tribunal, over the minds of the members of the democratical section: not only the influence derived from power—the influence of will on will; but the influence derived from knowledge, the influence of understanding on understanding. On every part of the field of action, have the subject many found themselves under the necessity of deriving their conceptions and their judgments, from the reports made to them, by the ruling and influential few: and with no exception, capable as yet† of operating with any considerable influence, have these reports contained anything but what was false, and in effect, if not in intention, delusive, causing

* Another inducement may, it seems, be added to the above; namely, the [illegible] receiving similar sinister benefits, on other occasions: which of course would not be likely to be the case, if it were known that [illegible] the service was not performed, after the benefit had been conferred [illegible].

† 1823.

the people to regard as conducive to their interests, those practices which were most adverse to those same interests: practices having for their effect the establishment of misrule, and of corruption as an efficient cause of it.

As in the case of mutually beneficial and innoxious engagements, mischief and vice consists in the breach of them, so in the case of those so extensively noxious engagements, does mischief and vice consist in their observance. Of the non-observance of a class of engagements, the ultimate effect is—that the practice of entering into such engagements is at an end. This is exactly the result conducive to human happiness—the result desirable in the case of all preponderantly noxious engagements. If, for example, notwithstanding all engagements, no favours were by any possessor of patronage ever obtained at the hands of any member of the legislative body, nor therefore at the hands of a majority of that body, no part of his patronage would ever be made to take that direction: it would be applied, the whole of it, to his own particular purposes, good or bad, whichever they happened to be: but, at any rate, it would not be applied to that worst of bad purposes, causing the legislative to add depredation to depredation, and oppression to oppression, by giving constantly increasing patronage, and undisturbed impunity, to the executive.

Of all the members of the community, taken in the aggregate, it is therefore no less decidedly their interest, that in regard to all such noxious engagements, *unfaithfulness* should be entire, than it is, that in regard to all preponderantly beneficial ones, *observance* and faithfulness should be entire.

From sense of interest come all notions of honour. There are, says a common observation, notions of honour among thieves. How should it be otherwise? Gangs of robbers could not have existence unless engagements between member and member, for the purpose of the common pursuit, had existence.

But if by fidelity to honest engagements between man and man, entered into for an innoxious purpose, the happiness of mankind is promoted,—so by fidelity to engagements between thief and thief, entered into for the purpose of thieving, the happiness of mankind is diminished.

Of the matter of corruption, the elements may be distinguished into the immediately applying and the unimmediately applying. By those which are immediately applying, understand those which are themselves among the objects of general desire, or to which some of those same objects are attached: those the application of which is unimmediate, are those in which the immediate objects have their source.

Of those which are unimmediate, the most fruitful by far are, wars and distant dependencies. Wars and distant dependencies beget offices: offices, corrupt obsequiousness: corrupt obsequiousness on the part of all who seek them, as towards all who give them.

Wars are alike employable in all monarchies. Distant dependencies are peculiar to those which are in possession of a quantity more or less considerable of naval force.

Where, as in the latter case, situation is favourable, these sources of corruptive influence are necessarily productive of each other. Never can war take place, but the quantity of the matter of corruption must increase: successful or unsuccessful, this is among the number of the effects of it. Be it ever so unsuccessful, it makes addition to the number of offices: of military offices, obviously: and in the train of military offices, come civil ones. In so far as credit has place, it adds to the quantity of public debt, and of the taxes imposed for the payment of the interest of it. Public debt requires offices for the payment of it: taxes require offices for the extraction of them. In a monarchy possessing distant dependencies, if a war in which it is engaged, proves successful, an addition to the extent or number of those dependencies, is a natural and frequent consequence of the success. To every other such government, each such dependency is an object of envy, and among all together a bone of contention: hence it is, that as war begets distant dependencies, so do distant dependencies beget wars.

In both these instances, diametrically opposite to the universal interest, is that particular interest by which in every monarchy the rulers are so uniformly governed. No war has there ever been by which the citizen subjects have not been losers: no war has there ever been by which their rulers have not been gainers. No distant dependency, by the possession of which the people at whose expense it has been acquired, are not losers: no such possession by which the rulers, by whom whether acquired or no it is retained, are not gainers.

In the literature of most states may be seen a sort of periodical work, in which is represented the state of the official establishment: the offices that have place in the state, being designated by their respective titles, with or without a designation, complete or incomplete, of the masses of emolument and other objects of desire respectively attached to them, and the individuals by whom, at the time of the publication in question, these offices are respectively possessed. In these books may be seen the matter, the maximization of which has in every government but one, been hitherto the primary, not to say the sole end of government, in the breasts of the respective rulers.

For bringing to view the influence of the matter of corruption upon public functionaries, the shortest course that can be pursued is to commence with that mass which, in a mixed and limited monarchy, is in the hands of the monarch: from thence a conception of the extent and operation of it, in inferior hands, may be formed without difficulty.

[illegible] wer of placing, no power of [illegible] included. In the power of dis- [illegible] reference to a situation of the [illegible], is included a power of punish- [illegible] superior in its effect, to any power [illegible] exercised under that name. Excess- [illegible] be deemed (and on that account [illegible] by the bill of rights) a pecuniary [illegible], by which a man in England should [illegible] of a situation equal in value to [illegible] valuable situation in any of the go- [illegible] boards.

[illegible] after trial, nor without conviction, [illegible] punishment which is called punish- [illegible] inflicted. No conviction, no trial is [illegible] in the other case: without opportu- [illegible] defence, without exposure to the eye of [illegible] opinion tribunal, without a moment's [illegible], it may be inflicted at any time.

[illegible] joys to a prodigious degree an exemp- [illegible] the controlling power of the public- [illegible] tribunal: that power to the operation [illegible], the exercise of coercive power is in [illegible] greater degree subjected.

[illegible] the production of any corruption aimed [illegible] act on the part of the corrupter-general [illegible] necessary. Therefore no act is there, to [illegible] disapprobation can attach itself.

[illegible] unofficial judicatory is scarcely less [illegible] to his corruptive influence than are the [illegible] judicatories. Nothing can he ever do, [illegible] abstain from doing, [illegible] no course, on any occa- [illegible], can his actions take, but laudation and [illegible] follow it, and attach upon it. [illegible] is bestowed upon him, for everything he [illegible] with, and for everything he keeps in his [illegible] hands, especially if and in so far as, others [illegible] let in to a participation of the benefit of it. [illegible] an article can he consume or use for his [illegible] personal gratification, but from various [illegible], praise follows him for what is done. [illegible] the first place come all those who derive a [illegible] from the supplying him with it, or hope [illegible] so with similar articles. To act thus, is [illegible] conferring a benefit on trade, and in the [illegible] of conferring this public benefit, he [illegible] said to find his only motive. By every such [illegible], he moreover adds to the splendour and [illegible] of the crown and the throne: and by all [illegible] whom the constitution is an object of at- [illegible], the necessity of this splendour and [illegible] lustre is a fundamental and unquestion- [illegible] article.

[illegible], and as often as, money or money's worth [illegible] any amount is parted with by him, without [illegible] immediate receipt or expectation of an [illegible] equivalent in any determinate shape, or at any [illegible] determinate time, the field of praise receives [illegible] other great enlargement. Then in full [illegible] may be heard ringing, all those to whom munificence, generosity and liberality, are objects of sympathy and admiration. Not [illegible] particle of money can be thus given, which [illegible] not been extorted from unwilling contri- butors, not a particle can be given, which will not be reimbursed to him in the same manner.

In his situation, not a particle can he ever give, which is not given at the expense of others. But his case is confounded with that of those benefactors, who have no means of giving but at their own expense. Of a half-starved beggar, who should share a penny just received from the hand of casual charity, with another in the same condition, the so dearly exercised beneficence would remain unknown and unapplauded: and even though it were universally known, faint is the applause that would be vouchsafed to self-denying liberality when exercised on so minute a scale. To help to gain a million sterling for paying debts already contracted, and make way for contracting more, suppose a monarch promising to the public a collection of books,* purchased at the public expense, of no use to the purchaser, and of no determinate and assignable use to anybody else—the praises of royal munificence will be sounded in the assembly of the legislature, and echoed wherever the fame of the virtue reaches.

As to the prevention or even diminution of corruption, nothing in a government so constituted can be more plainly or everlastingly impossible. Of all arrangements employed for the professed purpose of excluding it, or diminishing it, by means of punishment, the effect, if any, is to give increase to it, or to increase the mischievousness of it.

The only case to which punishment can attach to it, is that where a direct bargain is made. But in the case of any such bargain, the quantity of mischief will have its express limits: put out of the case the bargain, the quantity will be unlimited. The greater the service I render to the giver of good gifts, the greater is the value of the good gifts which I may reasonably expect to receive. Such is the reasoning which, in a breast so situated, can never fail to be made.

At the same time by the profession and apparent endeavours thus made to put an end to a practice, to the increase of which, or at least the maintenance, all real endeavours are directed, the effect if any, is to give strength to the delusion employed, to secure submission to the misrule. By no man can support have been given to any such pretended or supposed remedy, without proof made of inaptitude opposite to one or other branch of appropriate aptitude: in case of insincerity, of the branch opposite to moral aptitude: in case of sincerity, of the branch opposite to intellectual aptitude.

In a pure monarchy, (it has been already stated,) the operation of corruption has little place, in comparison with what it has in a mixed and limited monarchy.

There is no subject-matter for it to work upon. In a mixed and limited monarchy, this subject-matter is essentially present. This subject-matter is the body which represents, or is dealt with as if it represented, the people, and which as such is let in for a share in the exercise of the sovereign power of legislation. Without the concurrence of this body, the sinister desires of the monarch cannot receive their gratification: with that concurrence they may do so to an unlimited extent. But in an unmixed and unlimited monarchy, they may and do receive their gratification to an unlimited extent, without the concurrence of any such body: for no such body has place in it.

Not that even in the most unlimited monarchy, corruption is without its influence, nor therefore altogether without its use. It contributes to the mass of that sinister influence, but for which many, whom it has the effect of preventing, might otherwise embrace the cause of the universal interest.

In England, in virtue of the pre-established harmony, so long as the Constitution stands, corruption with its etceteras is predestinated to go on in a state of perpetual advance: never to be stationary, much less retrograde.

In this or that department an enormous abuse is brought to light. A member in opposition moves for papers to serve as documents with a view to the moving for a committee to inquire and report. On this occasion, till of late years, the practice was to resist the inquiry in limine—to refuse the papers. This practice continues at present; but upon the whole, such a facility in the granting them has place as forms a striking contrast with the ultimate result.

The case is, and so it has been found, that on this ground, in relation to their own sinister interest, the government cannot do wrong. If the papers are refused all subsequent trouble is saved: though they gain nothing, yet nothing do they lose: for as to reputation of probity for this long time none have they had to lose. If the papers are granted, then instead of loss comes positive gain of abuse. Of the mass of abuse a portion more or less considerable is brought to light: placed in so strong a glare as to be wholly uncontrovertible. Now comes the season of candour. The seat of the abuse being in the misconduct of the subordinates of government, it belongs to government to rectify what is amiss in the conduct of those its subordinates. A commission is now wanted: a commission, *i.e.* a set of commissioners, all of them of course named in one or other of two ways, by government. But this being a public service—a service of considerable labour—a labour too, the quantity of which will naturally be apt to increase with the quantity of abuse, remuneration becomes necessary: it being without example that, in some shape or other, it should not be given, it is given as of course, no argument being regarded as necessary to be produced in support of it: the only argument, if any, regards the quantum and the shape.

As to the modes of nominating these com-

* In allusion to the library of Geo. III. presented to the nation by his successor in 1823.—*Ed.*

missioners, there are two; by the Crown, or by Parliament: by the Crown, is by the Ministry in their closet; by the Parliament, is by the Ministry in the House of Commons; the result being equally at command in both instances, a question that naturally occurs is, wherein can consist the difference? what is it that should render it an object to either party, that either course should be chosen in preference to the other?

To give the answer, another distinction must be brought to view. In the number of these commissioners it is thought or not thought advisable by government to place a member of Parliament: a member of Parliament, *i. e.* one who is already of the number of their own adherents, or one who by this means is to be made so. If there be no member of Parliament, all they get by the business is the confirmation of the abuse, the impunity of those concerned in it, and the increase given to the quantity of the matter of corruption employed as such: if a member of Parliament, who was not before of the number of their adherents, is put into the commission; in that case, they get the additional advantage of this addition to their list.

In every political state, in which there exists a legislative body with an executive authority in other hands, there are two parties in the representative body: one composed of persons by whom the sweets of office are either possessed or expected to be received: call these the *Ins*. Another composed of those, by whom no expectation of favour in that shape is entertained, and whose whole course is accordingly directed, in the endeavour to gain possession of the aggregate mass of those sweets of office, and to that end, to the putting out of possession, the actual possessors: these are the *Outs*.

The *Outs* are not less in an unquestionable state of dependence than the *Ins:* nor in their case is the dependence less corruptive than in the other. In the state of the dependence, there is indeed some difference in the two cases. In the case of the Ins, the individuals on whom the dependence is, are more determinate: in the case of the Outs, less determinate. Still, however, neither in the nature of the dependence, nor (except in regard to the degree of corruptive efficiency) in its effects, is there in the two cases any difference.

In both situations, the temptation to yield to, and be determined by, the sinister influence, applies to every individual member: nor in the instance of any one such individual, on any occasion, can the probability of his resisting it, and not being determined by it, be asserted.

At the same time, it is on both sides, on all public occasions a universal practice of every individual, not only to deny the actual prevalence of the corruptive influence in question on each particular occasion, but the possibility of its prevalence on any occasion in his instance.

In denying the existence of this prevalence, the sort of phrase commonly employed is that by which *purity of motives* is professed.

True it is, that on this or that occasion, thus much it may be competent to a man (always on the supposition, that by the nature of the motives by which his conduct is determined, the merits of the question are in some determinate way affected,) to make known and thence to assert, namely,—that on the occasion in question, he does not stand exposed to sinister interest in any shape; or if there be any shape, in which he is exposed to sinister interest, that sinister interest has for its counterpoise, a right and proper interest, by which it is overpowered.

When the phrase *corruptive influence* is employed, it is by the laws and institutions themselves that the corruptive influence must be said to have been applied: applied to the individual in such manner as to have given birth to the sinister effect.

Dear in this case, it may be imagined how dear, both to corrupters and corrupted, are these same laws and institutions.

In this case it is not common for complaints of corruption to have place to any considerable extent: in general scarcely is it seen, or so much as suspected, that in consequence of this state of things, any considerable mischief has place: every man, as early as he has been taught anything, having been taught to regard as objects of the most prostrate veneration and the most boundless confidence, those same sources and receptacles of corruption—those same instruments of depredation and oppression.

At the same time this is the case in which mischief has place in a quantity, greater by far than in the opposite case. It has place to a greater extent, and throughout the whole of its extent it is effectually out of the reach of all cure, or even of restraint; for no one individual is perceptible on whom it is possible, without the appearance of injustice, to fix in any shape the imputation of blame.

But if neither open accusation, nor so much as secret imputation, can have place, still less can remedy in any shape have place. So far, therefore, as the corruption has place in this shape, the system of misrule by means of corruption may be said to have been raised to the very pinnacle of perfection.

The greater the extent to which corruption in this shape has place, the more conclusively probative is the circumstantial evidence by which it is proved, that on the part of the persons exercising in chief the powers of government, (and by whom, in the whole or in part, the profit from the mass of corruption thus constituted has been reaped,) the corruption that has place, is the fruit of design: that they know what they are about, and are fully conscious of the evil that has place, and that they, by being supporters, are, for the time being, authors of it.

In this case the corruption may be said to

be single-seated: or, borrowing an expression from botany, *monœcious*. The persons thus corrupted, namely the persons reaping the sinister and dishonest profit, may be said to be self-corruptors, self-corrupted: and a species of misdeed styled *self-corruption* may be said to have place and to be habitually committed.

Where the corruption is double-seated, or say *diœcious*, the nature of it is more easily conceived. In this case the corruption is reciprocal: by the corruptor and the corruptee a sinister benefit is either reaped or expected to be reaped.

Self-corruption always has place, in the case where the two powers, legislative in chief, and executive in chief, have place in one and the same hand.

This is as truly a case of corruption as that where it is double-seated: by the hand of power a benefit is reaped, and it is at the expense and by the sacrifice of the universal interest that it is reaped. With how much more facility the sinister private benefit, is in this case reaped, than in the other case, and the sinister public effect produced, is sufficiently manifest.

In the present case, there is no room for self-corruption in the highest grades: by the supposition, the legislative power is in one set of hands, the power of patronage in another.

In any one of these two departments, self-corruption may have place. In the executive, a superordinate, to save himself from providing at his own expense for a son of his, places him, though unapt, in a situation under him. This is as truly an instance of corruption, as if to a stranger he had sold the place for what it would bring, and put the money into his own pocket: the prime minister, for example, appoints a coward or drunken son to the command of an army.

Being engaged in the carrying on a manufacture, or having a son or other near relative of his who is so engaged, an influential member induces the Legislature to pass a probative or restrictive law, having for its object, the preventing the rest of the community from being supplied, with the sort of article in question, in better quality, or on cheaper terms. Behold here, an instance of self-corruption in the Legislature.

In the Judiciary department, the whole mass of that spurious sort of law which goes by the name of unwritten or common law, is the product of self-corruption. The judicial power entrusted to the Judges, is employed in lodging legislative power in their own hands. To the field of this power, scarce are there any assignable limits: scarcely is it distinguishable from that of the legislative. By means of it the Parliament of Paris, in the middle of the seventeenth century, contended with the Regent for the Sovereignty.

If power were all, and power had no tendency to beget money, here would be matter of corruption abundantly sufficient to produce the sinister effect. But wherever there is power, money cannot fail to follow it. Under the name of fees, Judges impose taxes on the suitors, denying protection and security against injury to all those who are not able to pay those taxes—that is to say, the vast majority of the inhabitants of the state. Formerly, the head judicatory in France, the Parliament of Paris, set such a price upon their definitive judgments that, for want of customers, they found themselves under the necessity of giving it up in particular instances, by selling a something at much less than an equivalent, as they could make it on cheaper terms. In Scotland, the Court of Session, taking French judicature for their example, have followed in this particular the same course.

By this in England have been produced the enormous emoluments of the higher judges: and thence the denial of what is called justice both in England and Ireland.

By the supreme and acknowledged Legislature, acting and acknowledged in that character, this usurpation is connived at.

Thus much as to the incurable nature of corruption: now as to the extent given to its influence. Observe the several classes which, by the nature of their situations, are subjected to the operation of it:

1. The several members of the legislature: and in the instance of every one of them, every individual who has, or supposes himself to have, any connexion with him, by any adequate tie of self-regarding, or though it be but sympathetic interest.

2. The several connexions, in like manner, of the administrative chief himself.

3. The several ministers, heads of the several departments of the administration, with their several clusters of connexions, as above.

4. All individuals who look either to the prime minister, or to any of the sub-ministers, or to any of their subordinates having locative power, with reference to official situations under them—these and their several connexions.

Let it not be said—this, then, is an objection against a representative democracy. For, suppose any other form of government, the case is beyond comparison worse.

Although the complete exclusion of corruption is too much to hope for, what is not too much to hope for is, the bringing it about to a degree less than it exists at present even in the United States: and though it were never to be reduced to an inferior degree, if it could but be brought down to that degree in every political state, a reduction to that extent might be contemplated with exultation by a lover of mankind.

For reducing its evil effects to a minimum, several arrangements present themselves: one consists in reducing to its minimum the quantity of the matter of good capable of operating in the character of matter of corruption: another, in providing a terminative remedy, by

giving, as above, to the constitutive, the power of removing from the establishment unapt members, in any number, as soon as may be after their inaptitude has become, in the judgment of that authority, sufficiently manifest. A third expedient consists in the bringing to bear, in undiminished force, the power of the public-opinion tribunal upon the conduct of the individual by whom, in each instance, the location is performed: vesting the power of location in the hands of a single functionary, and no more than one, much less in any such large number as shall constitute what in England is called a Board.

This last arrangement, if adopted, would put an exclusion upon the administrative, that is to say, upon the locative branch of the power of the senate in the constitution of the United States.

Thus in *act*, every form of government, except where the only possible antiseptic system is applied, and in *tendency*, even where it is applied, the whole official establishment is a corruptive establishment. To establish the constitution, is to establish a system of corruption by law. Well, and with strict truth, may it be said to be by law: for by constitutional law it is planted, and by penal law it is supported and maintained; and by law in neither ever has been, nor is, nor ever can be, excluded.

CHAPTER XI.

DELUSION.

The process of delusion may be considered either with reference to the class of persons operated on by it, or with reference to the instruments by which, or by means of which, the operation is performed, and the effect produced.

The class of persons on whom the most important corruptive influence operates, are the representatives of the people: the class of persons on whom the most important effects of delusive influence are performed, are the people themselves. Not that in the case of corruptive influence the effects do not spread far and wide among the people: not that in the case of delusive influence its effects are not, to an extent more or less considerable, produced on the representatives themselves. Essentially and mutually concomitant, during the whole of that progress, these two supporters of misrule go hand in hand, and increase the force and efficiency of each other. That of corruption, the principal and direct use is, to engage the representatives of the people to betray their trust, and sell themselves and the people to the universal corrupter—the monarch, in his capacity of corrupter-general: of delusion, the principal and direct use is, to engage the people to acquiesce in the breach of trust, and submit to be sold, oppressed, and plundered.

The instruments by which delusion may be produced, in company with corruption, are principally of that sort which operate by some special association which they have with the condition of the great pampered ruler: of this sort are the trappings of monarchy: fruits or indications of the matchless opulence so constantly attached to supreme power when placed in a single hand: the gorgeous palaces, the glittering throne, and still more glittering crown. Only as examples can these elements serve; for the multitude and variety of them is inexhaustible.

The objects of delusion are, to cause men to take an improper end for the proper end of government: and to entertain erroneous conceptions respecting the dispositions of the persons exercising the powers of government.

For this purpose, discourse is employed, of the laudatory kind, applied indiscriminately to all persons participating in the exercise of the powers of government: the praise rising according as the place assigned to the person in question rises in the scale of excellence; that is, according to the money, power, and factitious honour attached to it. Thus the character always attributed to the monarch of England is—most excellent, most gracious, most religious, and most sacred.

To this head belong those discourses by which credence is endeavoured to be gained for those false conceptions which have been brought to view, namely, that by which the happiness of this almost superhuman person is stated as an apt object of regard and solicitude, to the exclusion or preference of the happiness of all besides: that by which the happiness of all besides is represented as being, to the exclusion of his own, or in preference to his own, the object of his regard.

Amongst the instruments of delusion employed for reconciling the people to the dominion of the one and the few, is the device of employing for the designation of persons, and classes of persons, instead of the ordinary and appropriate denominations, the names of so many abstract fictitious entities, contrived for the purpose. Take the following examples:

Instead of Kings, or the King,—the *Crown* and the *Throne*.

Instead of Churchman,—the *Church*, and sometimes the *Altar*.

Instead of Lawyers,—the *Law*.

Instead of Judges, or a Judge,—the *Court*.

Instead of Rich men, or the Rich,—*Property*.

Of this device, the object and effect is, that any unpleasant idea that in the mind of the hearer or reader might happen to stand associated with the idea of the person or the class, is disengaged from it: and in the stead of the more or less obnoxious individual or individuals, the object presented is a creature of the fancy, by the idea of which, as in poetry, the imagination is tickled—a phantom which, by means of the power with which the indivi-

dual or class is clothed, is constituted an object of respect and veneration.

In the first four cases just mentioned, the nature of the device is comparatively obvious.

In the last case, it seems scarcely to have been observed. But perceived, or not perceived, such, by the speakers in question, has been the motive and efficient cause of the prodigious importance attached by so many to the term *property:* as if the value of it were intrinsic, and nothing else had any value: as if man were made for property, not property for man. Many, indeed, have gravely asserted, that the maintenance of property was the only end of government.

One of the causes of the delusion which attributes to the higher orders pre-eminence in relative moral aptitude, *i. e.* in effective benevolence, is the association by which men are led to regard a man's benevolence as being in proportion to his beneficence.

Were this, or any thing like it, the true ratio, or in any degree approaching to the truth, the richest would have, against the poorest, a complete monopoly: in the merit constituted by the possession of this quality, the poorest would be altogether without a share.

England contains several individuals, whose incomes respectively have been between £50,000 a-year, and £200,000. Suppose any such opulentist disposed to employ his money in the purchase of praise, and to employ 10,000 a-year in the purchase of it, what bounds could be set to the quantity he could command of it!

A man who has but twenty pounds a-year to live on, suppose him disposed to expend a tenth part of his income in the purchase of this brilliant commodity, how much would he be able to get for it!

Would you see effective benevolence in perfection,—look to the shillings, sixpences, and pence, given to the men who have been persecuted for the cause of the people. In the hearts of the givers, if anywhere, would you find effective benevolence.

Compare with their offerings the offerings made by men who, while overflowing in wealth and luxury, yet pretend affection for the same cause.

Other causes of delusion are—arrogance in official language: display of irresistible power: pretence to superior appropriate aptitude in any of its branches. In particular, pretence to matchless wisdom: of matchless carefulness for the morality and felicity of subjects. Add to these, peculiarity with or without expensiveness in official habiliments.

CHAPTER XII.

FICTION.

By fiction, in the sense in which it is used by lawyers, understand a false assertion of the privileged kind, and which, though acknowledged to be false, is at the same time argued from, and acted upon, as if true.

Belonging to it are various characteristic features.

It has never been employed but to a bad purpose. It has never been employed to any purpose but the affording a justification for something which otherwise would be unjustifiable. No man ever thought of employing false assertions where the purpose might equally have been fulfilled by true ones. By false assertions, a risk at least of disrepute is incurred: by true ones, no such risk.

It is capable of being employed to every bad purpose whatsoever.

It has never been employed but with a bad effect.

It affords presumptive and conclusive evidence of the mischievousness of the act of power in support of which it is employed.

It affords presumptive and conclusive evidence of the inaptitude of the form of government in support of which it is employed, or under which it is suffered to be employed.

It affords presumptive and conclusive evidence of moral turpitude in those by whom it was invented and first employed.

It affords presumptive and conclusive evidence of moral turpitude on the part of all those functionaries, and their supporters, by whom it continues to be employed.

It affords presumptive and conclusive evidence of intellectual weakness, stupidity, and servility, in every nation by which the use of it is quietly endured.

In regard to fiction, two sources of service require to be noted: One is the extent of the sinister service rendered; the other is the extent of the class of persons to whom the service is rendered.

In respect of the extent of the service rendered, the use of fiction may be distinguished into general and particular.

By particular use, understand the particular benefit which, on the occasion of such fiction, results to the class or classes of persons served by it: by the general use, the benefit which accrues to all of them in the aggregate, from the general principle of demoralisation which it contributes to establish: viz. that in regard to human actions in general, right and wrong, proper ground for approbation and disapprobation depends, not on the influence of the action on the greatest happiness of the greatest number, but on the practice, consequently on the will, and thence on the interest, real or supposed, of the aggregate of those same particular classes. Of the establishment of this principle of demoralisation, the object and the effect is—the causing men to behold, not merely with indifference, but even with approbation, in the first place, the perpetration of injustice, and in a word, of political evil in all its shapes; and in the next place, the employing as an instrument in the

giving, as above, to the constitutive, the power of removing from the establishment unapt members, in any number, as soon as may be after their inaptitude has become, in the judgment of that authority, sufficiently manifest. A third expedient consists in the bringing to bear, in undiminished force, the power of the public-opinion tribunal upon the conduct of the individual by whom, in each instance, the location is performed: vesting the power of location in the hands of a single functionary, and no more than one, much less in any such large number as shall constitute what in England is called a Board.

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other without land.

As prodigality and rapacity went on their course, all such portions of land, valuable enough to support the expense attendant on a seat, being all gone, and the demand for money being pressing, title and seat were not merely conferred without land, but money was taken for them: they were in a word *sold*.

When baronies, together with the higher titles in which they are included, first came to be sold, the money, with or without privity and connivance on the part of the monarch, went wholly or principally into the pockets of the brokers in the transaction—the favourites.

The occasion on which, for the first time, the money went avowedly into the pocket of the monarch, was that of the creation of the order of baronets by James I. An appellation, by which these men and their first-born for ever, were confounded with the order of knights—this appellation, with or without title to precedence above knights, was all that the purchasers of the article got for their money, some thousands a-piece: to such a pitch had the fascinating power of this instrument of delusion arrived already in that age.

In a monarchy, so long as there has been either a lawyer or a priest in office under it, (and no monarchy has there ever been without both,) the policy, which consists in the endeavour to cause established vice to be venerated under the name of virtue, has never been neglected.

Man's elevation in the scale of virtue—real and useful virtue—is, as it has been shown, as his altitude in the conjunct scales of power, opulence, and factitious honour or dignity, not directly, but inversely. But if this which is so incontrovertibly true, were universally or very generally perceived, monarchy, though

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But as each such member of the ruling few not only was placed, but at a short interval is displaceable by the subject many, what he sees from first to last is, that any considerable and lasting sacrifice of their happiness to his own is impracticable: and that for every attempt to effect it he would be liable to be punished. He will not, therefore, encounter any such risk.

Section II.

Authorities in a State.

For embracing at the same time the case in which the supreme power in the state is in the hands of some single person, and that in which it is according to any scheme of division, divided among persons more than one, a collective term is necessary: for this purpose the word *authority* is here employed. Accordant with this locution is the French phrase, *les autorités constituées;* whence in English, the constituted authorities.

The supreme authority in a state is that on the will of which the exercise of all other authorities depends: insomuch that, if, and in so far as, by any other authority the will of the supreme authority is contravened, the constitution by which the several powers are allotted to the several authorities is violated, and what is done is contrary to law.

Between authority and authority dependence is effectual in proportion to the exactness and constancy with which the act of the inferior corresponds with the last expressed will of the superior: in the same manner as the action of any individual corresponds with the last formed will of that same individual.

In this as well as other senses, as a synonym to the word *authority*, the word *power* is commonly employed. But transparency is more or less disturbed as often as, for designating objects so distinct and different as the person possessing and the thing possessed, the same denomination is employed.

The mode of locating an authority is either *simple* or *composite: simple*, when it is the result of the will of an individual, or of the wills of a set of individuals, all operating at the same time, and with equal effect: *composite*, when, expression having been given to the will of an individual, or set of individuals, as above,—thereafter for the completion of it, expression given to the will of a different individual, or set of individuals, is necessary.

Thus in regard to certain offices in the official establishment of the United States. By the Federal Constitution,* "the President . . . . shall nominate, and, by and with the advice and consent of the senate, shall appoint . . . . all other officers of the United States, whose appointments are not herein otherwise provided for." Here the mode of location is *composite*. "The President" (says the next paragraph) "shall have power to fill up all vacancies that may happen during the recess of the senate." Here the mode of location is *simple*.

The constitutive is supreme, or say, superordinate, with reference to every other authority: it resides in the whole body of active citizens throughout the state.

The legislative is superordinate with reference to every authority other than the constitutive.

Subordinate to the legislative, in the exercise of the legislative function, are the several sub-legislatures, by which that function is exercised in each of the districts.

In the administrative department, the direction of all other functionaries belonging to the same department, is in a single hand. Subordinate are all of them, with reference to the supreme constitutive and the supreme legislative. In each of them, the chief is with reference to all the other functionaries in his own department, superordinate and supreme.

So in the judiciary.

The supreme executive or operative authority, though in all its branches subordinate to the supreme legislative, is not subordinate to any of the sub-legislatures.

At the head of the executive is a single functionary, the executive chief. In his hands is the direction in chief of the whole of the business of the administrative department: and with relation to all the several functionaries employed in it, he is superordinate.

At the head of the judiciary is a single functionary—the justice minister. With relation to him, the executive chief is superordinate: but the direction of the business of the justice minister's department, is not in the executive chief's hands.

Section III.

Sovereignty in whom.

By the sovereignty is meant the supreme constitutive authority: in virtue of which, immediately or unimmediately, the people exercise, as will be seen, the *locative*, and eventually the *dislocative* function, in relation to the possessors of all the several other authorities in the state.

This function, the people not only are in the nature of the case capable of exercising, but in divers states are in use to exercise. As to any other functions, legislative, administrative, or judicial,—a state of things in which the people should endeavour to exercise *them*, would, if government in name, be anarchy in fact.

All those several functions, however, they are capable of exercising, and with unquestionable advantage do exercise, by proxy: namely, by their agents, and sub-agents, in the several departments just mentioned.

In those states alone, in which the sovereignty, or a share in it, is in the hands of the people, or a portion more or less considerable of the people, can any such authority as the supreme

* Art. II. Sec. 2.

constitutive, in a distinct set of hands, have place. In an hereditary monarchy, by no choice made by any human being, is any succeeding monarch placed in the situation left vacant by a preceding one. So neither in any aristocracy: unless it is by the surviving members that the vacancies having place in that body, are filled up. In this case there is indeed a *constitutive;* but not in hands distinct from those in which the other functions of the highest grade are lodged.

By the term *the people*, is meant the whole number of persons, existing in any part of the territory of the state,—such as are, at the moment of the time in question, admitted to act in the capacity of *electors*. The term people, though so far from being in its import determinate, is, on account of its familiarity, deemed for the present preferable: for prevention of uncertainty, reference must be made to the election code, where the requisite determinateness is given to it.

In the year 1798, for toasting *the sovereignty of the people*, at a public dinner, the Duke of Norfolk and the Hon. Charles Fox, were, by George the Third, struck out of the list of privy councillors.* If, by this toast, what was meant to be declared was, a matter of fact actually in existence, the fact thus declared was enormously wide of the truth: if, what was meant by the toast was, a declaration that, in the opinion of those who joined in it, that form of government in which the sovereignty is in the people, is the most desirable, the meaning of it is—that a form purely democratical is the most desirable one.

Why give the sovereign power to the largest possible portion of those, whose greatest happiness is the proper and chosen object? Because in all points or elements of appropriate aptitude taken together, be the political community in question what it may, this proportion is more apt than any other that can be proposed, in competition with it: in particular than any single one of that same number, or than any number smaller than that same number. Thus, absolutely speaking: and as to proportions, the greater the difference between this largest number and any smaller, the greater is the comparative inaptitude of such smaller number in all points taken together as above.

Considered by itself and without reference to any other, this greatest number, say, for shortness, *the people*, cannot on any just grounds be considered as deficient, in respect of aggregate appropriate aptitude.

Comparatively deficient, will be seen to be any one individual, taken from that same number, or from among the members of any other political community: that is to say, any person placed in the situation, and invested with the power of a monarch.

So any comparatively small number of individuals placed in the situation, and invested with the power of a sovereign aristocracy.

So any aggregate of partners in the sovereignty, composed of the people as above, (or their chosen agents,) a monarch, an aristocracy, or any two of these authorities, in whatsoever proportions the powers were shared, between the two or among the three.

As in the case of any other task, so in the case of this, the aggregate of relative or say appropriate aptitude will on examination, be seen to be composed of four elementary portions and no more: to wit, moral aptitude, cognoscitive aptitude, judicative aptitude, and active aptitude: understand in regard to each of them, appropriate relation had to the task or work in hand. By cognoscitive aptitude, understand that which consists in the possession of appropriate knowledge: by judicative aptitude, that which consists in the possession of the faculty of judgment in a sufficient degree of perfection. Cognoscitive and judicative aptitude taken together, constitute intellectual aptitude: and in so far as they are united in the same person, the appellative intellectual aptitude, may for shortness be employed, instead of employing those same two appellatives.

Add all these elements, each in adequate degrees together, and the aggregate of appropriate aptitude will be obtained. Let any one of them be wanting, it will not be obtained: and appropriate moral aptitude, it will be seen is that element, by the absence of which, the greatest gap in the adequate complement of appropriate aptitude will be constituted.

With relation to this task, or say—function, by appropriate moral aptitude, understand the being in an adequate degree actuated and guided by the desire of securing to the greatest number in question, at all times, the greatest quantity, or say the maximum, of happiness.

Where there is adequate power, as there is here by the supposition, correspondent to desires, will be endeavours: desiring their own greatest happiness, the persons in question will, in the exercise of the power thus possessed by them, endeavour in so far as they know how, *i. e.* are possessed of appropriate intellectual aptitude,—at the securing to themselves and those who are dear to them, the maximum of happiness.

By sovereign power, understand the power of locating those functionaries by whom the functions belonging to the legislative authority shall be exercised; coupled with the power of dislocation, exercisible—not only in relation to the persons so located, but also in relation to all those, by them located: to wit, whether

* The Duke gave, "The majesty of the people," at the anniversary of Mr Fox's birthday, in January 1798, and was dismissed from the Lord Lieutenancy of the West-Riding of Yorkshire. In May of the same year, Mr Fox, at the meeting of the Whig Club, gave, "The sovereignty of the people of Great Britain," and was removed from the Privy Council.—*Ed.*

immediately, or through a chain of any length, composed of intermediate locators.

As to the power of location, why, notwithstanding in this case, desires and endeavours will of course be exactly the same—why, with a few exceptions that will be mentioned, it cannot with advantage go lower in the official scale, will be shown in the proper place.

In the exercise of political power, whatsoever is done by the possessors of the supreme power must be done through agents: for as to actual governing, for this, it is admitted, the people are essentially unapt: and on this inaptitude proceeds the proposition, that for the exercise of the operative functions of government, in the highest degree, they should choose agents, who will naturally be some among themselves. On the part of these possessors of the supreme power, moral aptitude can of itself avail little, except in so far as it contributes to the choice of morally apt agents.

Here the aptitude of the people will be seen to be at a maximum. Not only does the moral aptitude of the people dispose them to look out for, and choose morally apt agents; but it disposes all men who are, or who wish to be such agents, to become morally apt. The only interest of his, which an elector can expect to serve by the choice of an agent for this purpose, is that which he has in common with all the rest. The only way in which, in quality of agent for this purpose, a man can expect to recommend himself to the good opinion and choice of the people in their quality of electors, is by appearing disposed to serve to his utmost this practically universal interest: and the only sure way of appearing disposed to serve it, is to be actually conspicuous in his endeavours to serve it.

Some among them, there cannot but be, whose aptitude in this shape is in comparison with that of the rest, at the highest point of the scale. By these men, such their aptitude (if it has not already been displayed) will of course on this occasion be endeavoured to be displayed. Of their pretensions, he who in his own eyes, is a competent judge, will form his judgment and vote accordingly. He who in his own eyes is not a competent judge, will ask for information and advice of some one or more, who in his eyes are competent judges, and so on. In such their choice of advisers some will be more fortunate, others less fortunate. But if in respect of the majority of agents so elected, they are not fortunate, the cause of the failure, lies in the nature of the case: by no other course, could a better chance for being fortunate have been obtained.

The same inquiry which leads them to the obtainment of appropriate moral, leads them to the obtainment of appropriate intellectual and active aptitude in their agents: they find men qualified at the same time with inclination and accordant intellectual power, suited to the purpose of obtaining for them, in the aggregate, the maximum of happiness.

In favour of this theory all experience testifies. The evidence is of so bulky a nature, that room cannot in such a work as this be found.* Negative proof, will be found to concur with positive. In the case of no people by whom agents for this purpose have been freely chosen, will any reason be found for the belief that agents in any considerable degree more apt, in this particular, than those actually chosen, could have been had. Meantime the uninterrupted and most notorious experience of the United States may be appealed to, as rendering superfluous all other proofs.

Section IV.

Constitutive,—why in the people?

By instituting the power of locating and eventually dislocating, and applying it to all official situations, and placing the whole of it in the hands of the people, a pure representative democracy is instituted: and this form of government, and this alone, as has been already shown, can have the greatest happiness of the greatest number for its effect.

For the exercise of those two connected functions, namely the locative and the dislocative, in relation to all the several other functions by the exercise of which government is carried on, the people are naturally endowed with the requisite degree of appropriate aptitude, absolute and comparative: absolute, with reference to the end in view simply, namely the production of the greatest happiness of the greatest number; comparative, with reference to every imaginable authority, that is to say, person, or set of persons, in whose hands it is possible to lodge, those several functions.

By what considerations can it be made to appear that the people, as above absolutely considered, possess the requisite degree of appropriate aptitude for the exercise of those same functions?

By general reason, and by particular experience.

What, in this case, is to be understood by general reason? Considerations deduced from the nature of man, as exemplified in the feelings, interests, affections, passions, motives, inducements, propensities, and actions, common to all individuals in all situations.

By particular experience, understand, in private situations, in the case of persons taken separately, and in political situations, in the case of persons collectively taken.

With respect to particular experience in private situations, look to the situation of a person having need of an agent for the management of certain of his affairs: namely, any affairs, be they what they may, which his time, or his faculties of all kinds, natural and ac-

* But see Introduction to *Parliamentary Reform Catechism*, and *Radicalism not Dangerous*, in vol. iii. —*Ed.*

quired, do not in his judgment, admit of his managing in his own person in a manner equally beneficial to himself.

Certain classes excepted,* a position which every person will be ready to accede to, upon the very first mention of it, is—that every person possesses apropriate aptitude with reference to the choice of his own agent or agents, or say his own trustee or trustees, for the management of all such affairs as it suits him to consign over to the management of any other person or persons. It being, therefore, undenied and undeniable, that for the management of affairs peculiar to himself, every man is thus apt to choose his agent; it will, therefore, rest with gainsayers to show what, if any, the circumstances are, by which it is that a person stands precluded, from taking his part in the choice of persons to be employed in the management of those affairs which are his, as well as those of all the other members of the community in question, whatever it be.

In this case, be it as it may in regard to absolute aptitude, there will be among all men but one voice in regard to comparative aptitude: and it is comparative aptitude that is here in question. To positions such as the following, no man is there who will show any disposition to embrace: "Every man's affairs will be better managed by agents, not chosen or removeable by himself, than by agents chosen and removeable by himself: or, generally speaking, a man's affairs will not be so well managed by agents, chosen and removeable by himself, as by agents chosen by other persons who are strangers to him, and those agents not removeable by himself."

A slave is one, for the conduct of whose affairs an agent, in the choice of whom he has no part, is employed. And what is the consequence? Let the annals of slavery,—let the state of the slaves in those governments in which it is established,—declare.

That which a slave-holding proprietor is, with relation to those whom he calls his slaves, an absolute monarch is, in relation to those whom he calls his subjects. In the one case, as in the other, in the exercise given to their power, more or less of harshness, or of mildness may be manifested, habitually or casually, by different masters in different countries, or in the same country. But, in the two cases, the power claimed is the same. If there be a difference, it is in the disfavour of the slaves of the monarch. For in the case of the slaves who are styled slaves, there is almost universally something or other in the state of the laws by which a restraint is imposed upon the faculty of putting the slaves to death; whereas, in the case of the master whose slaves are styled subjects, there is no such restraint: putting them to death in case of displeasure, is not only practised but avowed.

As to political experience, look at the situation occupied by the people in states, in which the form of government is a pure representative democracy: for example, the American United States united together in respect of certain functions and arrangements of government.

If it be denied that the people possess appropriate moral aptitude in a comparative sense, it must be assumed that, with reference to the end in view, there exist some person or persons by whom it is possessed in a degree superior to that in which it is possessed by the people. Such other person or persons, will either be persons belonging to some foreign state, or persons belonging to the state here in question. Suppose it a single person, and he belonging not to the state in question, but to a foreign state. Thence if so it be, that in comparison with him, the people do not possess the branch of appropriate aptitude, the case will be, that in the breast of this foreigner—say of this foreign monarch—the desire of seeing produced the greatest happiness of the greatest number of the people in the state in question, is greater than in the breasts of those same people themselves. And so in the case of the one or the few, belonging in both cases to the state in question. Hence we have three positions differing little from one another in absurdity:

1. A foreign monarch will, as such, have a stronger desire to see the greatest number of the people of this state possessed of the maximum of happiness than they themselves will have.

2. A native monarch will, as such, have a stronger desire to see the greatest number of the people possessed of the maximum of happiness than they themselves will have.

3. A set of men, more or less numerous, constituting an aristocratic body, (small at any rate, in comparison with the greatest number of the people,) will have a stronger desire to see the people possessed of the maximum of happiness than they themselves will have.

As to intellectual aptitude, if it be admitted on the part of the people individually and separately taken, in the case where an agent is to be chosen for the management of this or that portion of the affairs of each, that there will be no deficiency, absolute or comparative, of appropriate aptitude in this shape, in so much as that the aptitude of the choice made would not be likely to be increased by lodging the power of making it in any other hands,—it will appear that in the case of a choice to be made by each, for the affairs common to all, the deficiency, so far from being greater, is not likely to be so great. Whatever deficiency would have had place on the part of the people themselves for the affairs of government, will thus be supplied by their elected agents in the legislature.

* Namely, 1. Persons of unsound mind. 2. Non-adults, at an age so early as not to admit of their being justly considered as being as yet possessed of a sound mind with reference to the purpose in question.

[illegible] of appropriate [illegible] people and their [illegible], and in propor- [illegible] continually on [illegible] moral aptitude is al- [illegible] by time and expe- [illegible] aptitude will [illegible] scale) be in [illegible]. For the same [illegible], in the mon- [illegible] to time and [illegible], or on the de- [illegible] aptitude opposite to [illegible] being always con- [illegible] takes place in in- [illegible] employed in the en- [illegible] own happiness, [illegible] people.

[illegible]

[illegible] making the si- [illegible] by adequate [illegible]. But in the [illegible] community, [illegible] has place, the [illegible] the in- [illegible] are wanting: [illegible] corporeal instru- [illegible] to secure [illegible] oppression, [illegible] disposed [illegible] supporters: for [illegible] to his own [illegible] means of secu- [illegible] the like se- [illegible] general. Ac- [illegible] being added [illegible] good effect [illegible] he might [illegible] oppression at [illegible] attitudes, no [illegible] corporeal instru- [illegible] the corporeal [illegible] supporters in [illegible] the purpose: [illegible] power not being [illegible] corresponding evil ef- [illegible]

[illegible] propensities [illegible] have place, and in [illegible] have place [illegible], to a greater [illegible] productive of cor- [illegible] difference between [illegible] the one situa- [illegible] in the other [illegible] the case of those [illegible] corporeal [illegible] corporeal suf- [illegible] not taken away [illegible] the absence of [illegible] power of gratifying [illegible] hunger and thirst. [illegible] desires which have [illegible] complex good as is [illegible] or *money*, [illegible] attached to political situa-

tions, the absence of the corresponding expectation is capable of keeping the desire in a state in which it is altogether void of efficiency, and even to the individual himself, for want of attention to what passes in his own mind imperceptible.

Thus it is that the existence, not only of gratification, but even of desire itself, may depend upon a union with power. In the Anglo-American United States, Buonaparte might have been a Washington: in France, Washington might have been no more than Buonaparte. In the breast of Washington,—he being a man,—it cannot have been but that the desire of depredation or oppression, or both, to be exercised on the large scale, must at times have had place, and been more or less troublesome. Why? Because the power of affording gratification to a greater or less extent to such desire could not have been wholly unaccompanied by hope. But, of by far the greater number of those by whose suffrages Washington was located in the situation which give him the power of being what he became, take any one at random, no probability of his having ever been actuated, or even troubled, by any such desire, will be found in his instance. Why? Because in his breast there cannot have been any hope of gratifying it.

In a representative democracy, take any one member of the community acting in the exercise of the supreme constitutive power. His desire is to afford to himself security against depredation and oppression: such being his ultimate desire, his intermediate desire is—to see located in the situation of his representative, a man who, desire and power in all shapes included, appears to him likely to contribute, in a degree more than any other man would, to his possession of that same security: such is his desire, and such accordingly is his act,—the act by which he gives his vote. For the gratification of any sinister desire at the expense of the universal interest, he cannot hope to find co-operation and support from any considerable number of his fellow-citizens.

By Colonel Burr, who had been Vice-President, and, if he was to be believed, had the option of being President the representative democracy of the United States was to have been improved into an absolute monarchy: absolute monarch, Colonel Burr. Improved, yes; but how? by free votes, by the free votes of those by whom he had been freely made Vice-President? Oh, no: in how great a degree soever conducive to the greatest happiness of the greatest number by any such means the change was hopeless, even in that breast in which the desire was strongest, and as the subsequent endeavour proved, not altogether without hope. Oh, no: to the throne of the Anglo-American, United States, the road he had pitched upon, passed through the throne of Mexico. In his view, Mexicans were sheep, his own countrymen lions. First, he was to have been Emperor of Mexico. On the back of these

sheep he was to have been brought home to subdue and tame the lions.

SECTION V.

Constitutive,—why not in One?

Next, as to the hands in which, by the institution of a supreme constitutive authority in the hands of the many, the power in question is saved from being placed.

These are, those of a monarch, seated otherwise than by location, by other hands: and those of an aristocracy, seated otherwise than by location, by other hands.

These two authorities agree in this:—That not being located by other hands, neither are they dislocable by other hands: and being actuated in common with all mankind by the principle of self-preference, they pursue their own particular and sinister interest at the expense, and by the sacrifice, of the interest of the subject many, without any restraint.

In the condition of a subject, in the breast of every individual, the self-preferring principle feels restraint imposed upon it in its endeavours to effect the sinister sacrifice, not only by legal, but by moral obligation, not only by the power of the law, but by the power of the public-opinion tribunal.

But in the situation of monarch, the single ruling functionary feels himself exempt from the tutelary control, not only of the political sanction, but from the control of the popular or moral sanction, having for its judicial executive the public-opinion tribunal. From that of the political sanction altogether, in virtue of the irresponsible situation in which he is placed by law: from the public-opinion tribunal in great measure, by means of the influence which his situation gives him on the judgments pronounced by that unofficial judicatory.

At first blush, unwise would the proposition be apt to appear which should propose that the successor of the monarch, for the time being, should be determined by pure chance: by chance without any determinate political situation by which the range of its dominion would be limited. Take for example the mode of election that, in this case, would be prescribed by the principle of equality: a lottery in which the crown shall be the prize, and in which every member of the community shall have a ticket.

But in comparison with chance and education, which has everywhere determined the order of succession in a monarchy, absolute chance acting through the medium of a lottery, so far from a comparatively inefficient course, would be an eminently and incontestably beneficial and wise one. Understand by education, those qualities, which are the result of those circumstances in which, in respect to power, money, factitious dignity, habitual desires, habitual means employed in gratifying them, and associates of all classes, a man's political situation has placed him. In all this what belongs to nature is the result of chance.

In the case of the lottery, the majority of the tickets being in the hands of the majority of the inhabitants, and all sinister influence being excluded by the supposition, the odds would be in favour of an individual belonging to the lower, that is to say, the more numerous order: an individual whose interest, down to the moment of the drawing, had always been (and thence his affections) in alliance with, and in favour of, that of the greatest number.

By his elevation, his mind would, there can be no doubt, be in a greater or less degree deteriorated, in the moral branch, on which the other branches depend for their usefulness: but at the worst, it would not be to any such degree deteriorated, as to reduce him in the scale of appropriate aptitude to a level with the man, by whom, in the other case, the situation is occupied. Sympathy of affection,—that sympathy which corresponds with moral aptitude, would, in a greater or less degree, be extinguished: but that branch of aptitude, which could not be extinguished, is the sympathy of conception: if, to whatsoever degree, the feelings of those, whose condition is similar to what his own had been, come to be the objects of his neglect, no part of the neglect could in this case, as in that, have been produced from the want of knowing what, on each occasion, those feelings are.

If there be any person by whom it can be seriously contended that for the locating—the choice, of agents, by whom the business of government shall be conducted, the hand of the monarch is fitter than that of the people, it must be, on one or other of these grounds:

1. That the happiness or unhappiness of the people has, on this occasion, no title to regard: for that the question receives an unanswerable decision, by the observation that the title of the monarch to make such choice, is the only *legitimate* one, provided that the race to which he belongs has, for a certain length of time, been in possession of the throne.

2. That the happiness and unhappiness of the people has indeed a title to regard—a title perhaps to as great regard, as the happiness and unhappiness of the monarch himself. But that, on their part, so consummate is the want of appropriate intellectual aptitude, on his part, so consummate the abundance of it,—and at the same time so intimate is the connexion between their happiness and his, that by leaving the choice exclusively to him, more effectual provision will be made for their happiness than if the choice of the agents, for this part of their business, were altogether in themselves.

The first of these is so flagrantly and palpably absurd, that it baffles all the power of intellect to make answer to it. In fact, it has nothing to do with intellect. All that it denotes is a mere expression of will, and nothing else: and for giving expression to it, as well

might any other word, as the word legitimacy, be employed.

With respect to the second, altogether groundless and untenable is the notion of any such unity of interests. Between individual and individual in a democracy, everywhere, yes: between monarch and subjects, in a monarchy, nowhere: instead of unity, repugnancy.

Between every animal of prey on the one part, and the animals preyed upon on the other, a certain community of interests has place. It is the interest of the wolf that the sheep should be fat and abundant, and that pasture, to render them so, should abound at all times. It is the interest of the commander of an invading army, that not only subsistence, but abundance should have place in the greatest possible quantity wherever he makes his inroads. It is the interest of all pirates, that wealth should be abundant in all seas and on all coasts to which their piracies are to be directed. It is the interest of all highwaymen, not only that travellers should be numerous, but that their purses should be well-lined. Exactly of the same sort is the interest which the monarch has in common with his subjects.

Take for example the case of Ireland: Of every, the most indigent day-labourer, it is the wish, that of the matter of subsistence and abundance, the aggregate of the quantity in the whole country may be at its maximum: and to this wish there is no conditional or restrictive clause. For that by any addition to the aggregate, any diminution should be effected in his share, is a result which, true or false, is not of a nature to find its way into his conception.

This same wish has place in the breasts of the body composed of the ruling one and influential few. But here comes in a sort of proviso or restrictive clause: provided my share of the produce of the taxes be not diminished by it, says the tax-fed placeman: provided my tithes be not diminished by it, says, in like manner, the tithe-fed priest: provided our fees be not diminished by it, say the fee-fed judge and advocate.

But abundance cannot be increased unless the taxes be diminished, the tithes, for which no service is rendered, abolished, and the services of the judge and those of the advocate placed within the reach of all who need them. But to the doing of this, what would be necessary is, that after the extinction of the existing set of extortioners in all these several shapes, extortion in these shapes should cease. This, however, is what the extortioners (even though the benefit of their own extortions were preserved to them) would not endure to think of: for, of whatsoever sympathy they have, every particle is engrossed by the comparatively few persons in the same condition in life as themselves: antipathy, not sympathy, is the sentiment with which the whole class of those by whose labours they are pampered, is regarded.

Thus it is, that in support of depredation, oppression in all its shapes will, in that country, keep on its course, until that suffering, or the fear of it, which when inflicted on those who suffer by irremediable injury would be called justice, overtakes the authors: and those who in that country now tyrannise in the name of Christ, share the fate now experiencing by some of those who tyrannise in the name of Mahomet.

Whatsoever be the difficulties which stand in the way of a good choice, in the situation of elector in a democracy, inconsiderable will they thus be in comparison with those that stand in the way of a good choice in the case of a monarch. For pre-estimating the qualities, absolute and comparative, of each candidate, the monarch will have no other guide than the whispers of a number of dependants, all of them interested in deceiving him: all of them constantly occupied in the endeavour so to do: all of them, in intention, deceivers,—all of them, even in profession, flatterers.

For the exercise of this same function, how much more advantageous is the situation of an elector in a democracy. Into no company can he enter without seeing those who, in relation to this subject, are ready to communicate to him whatever they know, have seen, or heard, or think. The annals of the year, the diaries of the day, the pictures of all public functionaries, and of all those who aspire to be so, find a place on his table, in company with his daily bread.

For nothing of all this has the monarch any time. His time is engrossed by the gratification of sensual appetites, and by the receipt of homage and flattery, in all its forms.

Objection. In many countries, for want of a public-opinion tribunal, the people would not be ripe for receiving a representative democratical constitution: they would be incapable of playing their part in it. In such a state of things, a mixed monarchy, with or without two chambers, is the only resource for training them. Of every dissension, an appeal, more or less explicit, to the people, would be among the results.

Answer. How small soever were the chance of success in the case of a democracy, in such a state of things as the above, it would be much less so under any mixed monarchy. Howsoever might the monarch and his coadjutors disagree one with another, much sooner would they come to an agreement for a division of the power, *i. e.* for the carrying on the business in a close partnership, as in England,—than consent to part with, or suffer the least particle of power to be any longer than they could not help it, in the hands of the people. Every body of men is governed altogether by its conception of what is its interest, in the narrowest and most selfish sense of the word interest: never by any regard for the interest of the people. In that position, none of those inducements, any one of which may suffice to

cause a single man to make sacrifice of his private interest to the universal interest, can have place: viz. desire of reputation, pleasure of sympathy for the people, pleasure of power in respect of the secret consciousness of having had so large a share in contributing to the happiness of the people. Yes, perhaps for a moment, under an excitation produced by a fine speech: but for anything of a continuance, never is any body of men determined by any other consideration than its conception of what is in the highest degree beneficial to its purely self-regarding interests.

In a monarchy, be the conduct of the ruler ever so mischievous, the difficulty of dislocating him is prodigious, and scarcely ever can any change be effected without either a homicide, or a war—which is an aggregate of homicides by hundreds and thousands; whereas, in a representative democracy, the rulers may be, and continually are, all of them together, though it be merely in the way of precaution, and without evil actually experienced at their hands, dislocated with as much facility as a servant is by his master, in domestic life.

SECTION VI.

Dislocative Function,—why Universal?

Why give to the dislocative power an extent thus all-comprehensive?

Because no extent, less than this, would suffice to prevent the constitution from being gradually changed into one of that sort, which has for its object the promotion of the sinister interest of the ruling few, and thence into one of that sort which has for its object the promotion of the sinister interest of the ruling one.

Unless this power be instituted, a transformation of this sort, sooner or later, is matter of certainty: and even supposing it instituted, the efficiency of it is not so complete as to exclude the need of adding to this security, whatsoever others the nature of the case affords.

The sinister force, against the effect of which this power is a necessary preservative, is that of corruption, or say, anti-constitutional corruption.

Anti-constitutional corruption is that which has place, in so far as, by the operation of a benefit to himself, received or expected, a functionary who, as such, is an agent and trustee for the people at large, is made to violate such his trust.

Unless this power be instituted, the deputies of the people, invested as such with the supreme legislative or operative power, will, sooner or later, in a number sufficient for producing the sinister effect, be sure to violate their trust; and that in such sort and degree as to give commencement and continuance to an all-comprehensive system of extortion, dissipation,* and oppression, until, by the continually augmenting sacrifice of the universal interest to that of the ruling few, in respect of money and power, the constitution is made to undergo one or other of the above two changes.

As to the dissipation, so far as it has place, not being attended with profit to the author, it will be the work of negligence or incapacity rather than design; of negative rather than positive agency. Not being attended with profit to the author, the amount of it is not likely to approach in magnitude that which is the work of design. On the present occasion it may, therefore, be dismissed without further consideration.

As to the extortion, the mode in which it is made to increase is this:

The legislative power is in one set of hands; the administrative in another. To the legislative it belongs to distribute the aggregate business of the rest of government into a certain number of departments: to determine the offices, or say the official situations, belonging to the several departments, and the functions to be performed for the commonwealth in virtue of those same offices. To exact the performance of these services at the hands of persons unwilling, would in general, neither be consistent with equality in respect of burthens, as between individual and individual, nor with policy in respect of appropriate aptitude on the part of the individuals in question, with reference to the performance of the service in question, in each case. To procure acceptance of the office in question at the hands of apt individuals, it will therefore be necessary to attach, in addition to the power attached to it, emolument of the pecuniary kind to an amount more or less considerable.

The fictitious entity termed an office is also styled a *place*. The person on whom the obligation of performing the functions allotted to it is imposed, is said to be in the office or the place. The business performed by the exercise of these several functions being, when taken in the aggregate, a course of action directed to one common end, namely the giving execution and effect to the will of the supreme legislative,—it is material that, unless for special cause of exception, the determining by what persons respectively they should al be filled, be lodged in the same hand. Here, then, lodged in this one hand, and at the disposal of this one hand, is this vast mass or stock of the instruments of felicity composed of money in various shapes, and power in various shapes,—with or without factitious dignity in various shapes: for although that offspring of the fancy is neither necessary nor conducive to good government, it has almost everywhere, by the concurrent influence of various causes, been added to the stock of the instruments of government. *Patronage* is the name given to

* Dissipation as applied to the *matter of wealth*, is where, through the fault of a person, having it in charge, the value of the subject matter in question, is diminished.

the power of disposing of the several elementary masses of which this aggregate mass is composed.

To create the power attached to the several offices, and by its ordinances to provide the money employed in engaging men's acceptance of them, belongs then to the supreme legislative.

The individual to whom the patronage of the various offices belongs, has an interest in seeing the number of places at his disposal, as well as the emolument attached to them, increased as much as possible. On the other hand, to make any increase is not in his own power: it is in the legislative authority, and in that alone, that the power of giving any such increase is reposed.

Thus in relation to this same universally coveted matter are two authorities: one of them having what there is of it at its disposal, but not of itself able to make addition to it: the other able to give increase to it, and that to an unlimited amount, but at the same time, of itself not able to get for its own use so much as a single particle of it. Here, then, is a pair of mutually relative situations: a certain profit which, by the assistance of the other, each can make: without the assistance of the other, neither. Between those in the one situation and those in the other the intercourse is continual: to put them on both sides in possession of what cannot fail to be a constant object of their desire, nothing more is necessary than a mutual understanding: an agreement which, to effect its every purpose, need not so much as be expressed. To the imagination of men on both sides, an obvious contract, pregnant with mutual advantage, presents itself: a tacit contract, which, if expressed in words, would stand as follows:—You, says the head of the administration, with his colleagues, if he has any, and if not, with his most confidential subordinates,—you give increase, as far as you see convenient, to the aggregate value of the good things we have at present, and at any rate, preserve it from decrease. We, on our part will, from time to time, and at all times, let you into a share of them.

To the reader, for conveying to his mind the idea of a contract to this effect, some determinate set of words were necessary. But to the production of a correspondent course of conduct on both sides, no words at all would be necessary.

Take, for example, the state of things under any Constitutional Code. On the one part, stands a supreme legislature, composed of deputies located by the people: on the other part, a supreme administrative authority, in the hands of a single functionary. The course of government under the constitution commences. By the majority of the legislature an administrative chief is elected: his first business is to fill the several situations under him,—all of them to a degree more or less considerable beneficial to the possessors, or they would not give their acceptance. Whether it be without or notwithstanding opposition, that he has been elected to be administrative chief, it can be no secret who those individuals are who have been of the number of his benefactors. As little is it likely to be a secret to him what are the connexions nearest and dearest to each. Thus, at the very commencement of his administration, the most obvious policy would join with gratitude in pointing out for the objects of his choice (unless in case of some very decided and peremptory objection) such persons as he sees reason to think it would be agreeable to his and their respective patrons to see thus provided for—the deputies themselves, if the law admitted of it: but the law not being stupid or corrupt enough to affect to expect that the same man will be at two different places, occupied with two different businesses, at the same time, no such abomination does the law admit of.

Given to a connexion of his, money or money's worth, may be of the same value to a man as if given to himself: and therefore have effect to the same amount, in respect to the creation of corruptive dependence.

The effect will be exactly the same, if by a benefit thus received by his connexion at the public expense, he is relieved from the burthen of conferring a benefit to that same amount at his own expense.

Pecuniary amount being the same in both cases, a more effectually corruptive dependence may be created by the fear of losing a beneficial situation already in possession, than by the hope of gaining one.

By the hope of receiving benefits in the shape of official situations through the medium of his connexions, corruptive dependence may be made any number of times stronger, than by the hope of benefit in the shape of office receivable by himself. For to the number of offices possessible at the same time by himself, there are limits: whereas to the number of offices possessible at the same time by a man's connexions, there are no limits.

By a benefit already received, and without hope of any other, obsequiousness as effectually corrupt may be created as by corruptive hope. The sinistrously directed force of the public-opinion tribunal, is, in this case, the power by which the corruptive obsequiousness is produced. *Ingratitude* and *perfidy* are, in that case, the words of condemnation, by which the punitive power of that tribunal is applied to the thus created offence: ingratitude, in not making a correspondent return for the benefit received: perfidy, in the violation of a contract which, though not expressed in words, was not less clearly expressed by other signs.

In this case as in some others, the direction given to the force of the public-opinion tribunal, is exposed to two opposite impulses: a right and proper impulse, and a sinister impulse. Of the two, the number of individuals

whose judgment is determined by the sinister impulse, is, in the present state of society, incomparably greater, than the number of those, whose judgment is determined by the right and proper impulse. For the occasions on which the exercise of the virtues of gratitude, and fidelity to engagements, and abstinence from the opposite vices of ingratitude and perfidy, are called for,—are happening to every individual every moment of his life; whereas, on the other hand, of the occasions on which any man is called upon to exercise the virtue of incorruptibility, as against the corruptive influence of the possessors of the supreme power in the state, the number is limited, and in comparison, extremely small. And, moreover, the number of persons to whom these occasions happen, is also small in comparison with that of all the members of the political community, whatever it be.

Thus is corruption planted in the very vitals of the constitution, and by the hand which is striving with its utmost force, to preserve the constitution from the baleful effects of that disease.

As to prohibition and punishment, by no such instruments can any remedy, in any the smallest degree efficient, be applied. To the representatives themselves, you may indeed prevent the good things in question from being given: but in the instance of any one of them, can you prevent these good things, in any number from being given to persons connected with him, in any number? Unless from himself, how is it possible for you to know who are, and who are not dear to him. The law, with the help of his pedigree, if he has one, will show who in the several degrees of consanguinity and affinity, are near to him: but neither of them will show you, who in any degree are dear to him. Consanguinity, though so obviously fallacious, suppose it for argument sake, unfallacious, and sufficiently conclusive evidence; on this account, shall it be placed in the power of a set of electors, by electing a man to a seat, and the individual elected, by accepting it, to strike the whole of his kindred, with the political incapacity in question?

You cannot punish a man for entertaining expectations: you cannot punish another man for gratifying, or for raising, expectations. You cannot punish a man for doing kind offices—for conferring benefits: you cannot punish one man, because benefits in any shape have been conferred on another: you cannot by any punishment inflicted or threatened to be inflicted, on one man, prevent or undertake to prevent another man from receiving benefit in any shape. Contract, having for its object the rendering of sinister service, you may prohibit in all cases, and in here and there an instance, by means of accident, or by means of treachery, you may actually inflict punishment for it. But though you were to inflict the punishment in every case in which the prohibition is infringed, and the offence committed, you would be no nearer the mark,—if prevention of corruption was your mark—than if no such prohibition had been issued. Why? Because without any such contract, corruption as effectual and as great in extent, as by means of contract, may have, and will be sure to have, place.

If this be so, and if, to every eye that will turn to it, this be visible, everybody will know what to think of laws enacted, or proposed, for the prevention of contract in such cases, or for the exclusion of the practice of holding offices by men having seats in the legislative body—if such laws are said to be designed as a means of preventing corruption.

The proposers and eulogists of such laws have for their real object, the producing on the part of the people, both or either of two persuasions: one is, that the public men in question have sincerely at heart the diminution, and if it were possible the extinction, of the evil: the other is, that the applying to its evil effects, such limitation as shall prevent the fruits of it, viz. depredation, oppression, and dissipation, from coming to maturity, is not by any means possible. In both or either of these persuasions is seen a source of satisfaction and acquiescence on the part of the people: the impossibility of putting exclusion on the evil, they will refer to the will of the Almighty: the exertions, fruitless as they are, of the public men in question, they will ascribe to the excellence of the individuals, and the excellence of the constitution.

Of the people's thus looking for a remedy to the authors (sure supporters of, because constant profiters by, the disease) what is the consequence? That, so long as they do so, so long do they forbear to lend an ear to the surely efficacious, and only possible efficacious remedy—the changing the government from a form in which such corruption is certain, constant, and universal, to the one only form in which the exclusion of corruption is certain, the existence of it, in a practical sense impossible.

Not that, even without this remedy, distributed as hereby are the powers of government, and effective as is the power given to the people at large under the name of the supreme constitutive, could any considerable evil be produced, otherwise than as above by sinister confederacy between the leaders of the legislature and the executive chief.

By this means, conjoined with the like power given to the legislature, all dangerous tendency is taken away from the power given to the executive chief, to dislocate all functionaries whatsoever, belonging to the administrative. Without this power, exerciseable with relation to such his subordinates, the executive chief could not possess sufficiently assured means of giving execution and effect to the will of the constitutive, as indicated by the ordinances of the legislative; without this power exercise-

able with relation to, and over, the executive chief, the supreme legislative, could not stand assured of giving execution and effect to its own ordinances and arrangements, made in pursuance of its endeavours to give execution and effect to the will of the supreme constitutive, and thence increase to the greatest felicity of the greatest number.

By keeping out of the hands of the constitutive, all locative power, with relation to any office that of member of the legislature excepted, all danger of abuse, from the all-comprehensiveness of the dislocation is obviated. Unless accompanied and followed by the exercise of the power of location, with relation to the office, no question, no sinister interest could any party-leader have, in bringing about an exercise of the dislocative power with relation to that same office. For by dislocating an individual, where could be his profit, not having the power of putting either himself or any confederate or dependant of his in his place?

The power thus given to the supreme constitutive, the power of thus dislocating all its agents without exception, is nothing more than what in private life, in relation to the private affairs of each particular individual, is given to that same individual: and in this latter case, so far from all objection is this power, that not to give it, would be regarded as one of the grossest of all absurdities.

Should it be said that in the case of this vast aggregate, the exercise of the power is liable to have caprice, or passion, or thoughtlessness for its cause, better reason on all these several grounds might be given for the refusing it to each individual with relation to his own particular affairs. For in the case of the vast body, how great would be the public discussion, consequently what an intensity and continuity of attention, that would be necessary to the production of the effect in question; while in the case of the individual, it may be the work of a single thoughtless moment.

In vain would it be to say, in this state of things, the wisest and most virtuous of men might be turned out by a mob: violence and disorder being their means of operating. Signing a petition is not the work of a mob: is not the work of violence: as little is the silent and secret delivery of a vote. Where the exercise of locative power in the same hands follows not upon that of the dislocative, no adequate inducement has place, except the persuasion of the existence of the functionary's inaptitude.

Suppose the functionary, on whom the power is exercised, be a member of the legislature, the exercise of it, on a particular occasion, would be nothing more than an accelerated anticipation of that exercise which at the end of the year would take place of course.

If the functionary or functionaries, were any other than the members of the legislature, the exercise could not take place, but on the supposition of a neglect or connivance on the part of the legislature: it would betoken a want of confidence in the legislature as a body, and the members would naturally be on the watch, and take measures for saving themselves from the expression of such want of confidence.

In regard to the exercise of the power of the supreme constitutive, either in the dislocation or the punition of its supposed offending agents, what is desirable is, that the actual application of it, be as rare as possible, and at the same time in the breasts of those same agents, the expectation of its eventual application, as strong as possible. The first thing to be desired is, that on the part of those same agents, no such act of transgression be ever committed. To this end, what is desirable is, that in the event of any such transgression, the probability of such dislocation and punition should, in the eyes of the several members of the legislature, at all times be as great as possible. To the accomplishment of all these several desirable purposes, are the several subsidiary arrangements here provided, directed, namely, the legislator's inaugural declaration, and those by which the quantity of appropriate information, with which the members of the public-opinion tribunal are supplied, and the frequency and intensity of the attention respectively bestowed upon that same information, are all endeavoured to be maximized.

Thus then in regard to the power here reserved to the people, exerciseable over all their servants, and at all times, these things may be noted:

1. The exercise of it, if ever, is very rarely likely to take place.

2. The possession of it is not the less likely to be effectual.

3. In no shape is evil likely to result from the exercise of it.

4. By no other means could the effects aimed at, be so surely, if at all, produced.

Section VII.

Means of Execution.

In the case of a representative democracy, the means, and the only means, by which this form of government may be rendered conducive, in the highest degree, to the only legitimate end of government, are no less obvious and natural, than they are simple: order matters so, that the persons by whom the immediately acting powers of government are exercised, shall at stated times, and at short intervals, be removeable, all of them without exception, by the persons possessed of the original and originative powers of government: trustees, by principals; ruling few, by subject many. I say subject many; for, by the exercise of the right or power of election, with reference to those by whom the powers of government are exercised, subjection is not excluded;—no, nor under this form of government, even by the exercise or possession of those powers themselves.

Misrule is the thing to be, as far as may be,

excluded. By the very nature of man, misrule, as far as any balance on the side of advantage to the ruler, is expected by him, is necessitated: by the assurance of eventual removal—by this, and not without this, that expectation of advantage may be excluded.

In election at stated times, the effect of the power of appointment, and that of the power of removal, is included. If having at the time immediately preceding the day of election, occupied the situation in question, a man is re-elected, the power of appointment is exercised in his favour, the power of removal with relation to him is forborne to be exercised: if he be not re-elected, the power of removal with reference to him is exercised, the power of appointment with relation to him is forborne to be exercised.

This indirect, and, as it were, covert mode of removal, is much more efficient and salutary than that direct mode which would be the most apt to be presented by this appellation. To the person over whom the power is exercised, it is much less harsh and galling: on the part of the person by whom it is exercised, the exercise of it will therefore naturally experience much less reluctance. In the case of the direct mode, if there be any other candidate, the inaptitude (the opinion of which is expressed by the forbearance to elect the person in question) is not positive and absolute; it is only comparative: the opinion that it declares is,—not that the person thus set aside is less apt than an average man—not that he is positively unapt, only that he is less apt than the person for whom the vote is given.

Now as regards the mode of election of the agents of the people.

Universality, secrecy, equality and annuality of suffrage—is an expression preferable to that of universal suffrage, annual elections, and vote by ballot. Why?

By the advocates for radical reform, the phrase as yet most commonly employed for characterizing the system which they advocate is—universal suffrage, annual parliaments, and vote by ballot.

Compared with universality, secrecy, equality, and annuality of suffrage, the following are the imperfections under which that hitherto most commonly used expression seems to labour.

In the first place, of a very material feature of the system, no mention is thus made: a feature of the importance of which no person by whom the three others are advocated, fails, it is believed, of being fully sensible. To regard it as being immaterial, would be to regard the arrangement by which, in the case of Old Sarum, the appointment to a seat in the House of Commons was given to a single individual in the character of an elector; and the arrangement by which the appointment to no more than two seats were given, as in the case of Yorkshire, to a population of probably not less than a million of individuals,—as being both of them unexceptionable.

In the next place, to the expression, the import of which is understood by every individual without exception, viz. the word secrecy, is substituted the words—by ballot, an expression to which no very determinate idea is attached in the mind of any man; nor, except by means of the word secrecy any idea whatsoever.

In the third place, of the four features that are indispensably necessary, the three which, without the fourth are thus presented, are presented without any common bond of connexion: they are presented by three separate forms of expression, between which no intimation of any connexion is conveyed: whereas, by the phrase universality, secrecy, equality and annuality of suffrage, the connexion which has place between the things themselves, is at once concisely and significantly expressed.

I. *Universality.* If a man who calls for the right of suffrage to be given to any one human being, calls for its being refused to any other human being, it lies upon him to give a particular reason for such refusal.

For the refusal of it to persons of both sexes under age, two plain reasons can be given: first, that a person who is not yet competent to the management of his own affairs, cannot have much reason to complain of being debarred from interfering in the management of the affairs of others: and second, that the exclusion thus put on the ground of age, is not like the exclusion put upon the ground of sex, perpetual, but temporary only; and upon the arrival of the person at the age at which he is generally regarded as competent to the management of his own affairs, this exclusion is sure to cease.

Various classes of persons might be mentioned, who, if the result of the election could depend upon the direction given to their votes, might, on the ground of this or that disqualifying circumstance, with reason be excluded. But for justification of such exclusion, sufficient proof of the existence of such disqualifying circumstances, would require to be given. Hence to an indefinite amount litis-contestation, expense, vexation, and delay, must have place: evils which ought not to be admitted, unless their admission be made up for, by some assignable preponderant good.

On this occasion, look to the several cases of persons insane, convicted delinquents of various descriptions, and persons by whom, but for the protection afforded by secrecy of suffrage, coercive influence might, to an indefinite extent, be exercised on the votes of others.

The happiness of the most helpless pauper constitutes as large a portion of the universal happiness, as does that of the most powerful, the most opulent member of the community. Therefore the happiness of the most helpless and indigent has as much title to regard at the hands of the legislator, as that of the most powerful and opulent.

If the possession of a share in the supreme

constitutive power is a means of, or security for, happiness, there is as much reason why a share in that means of security should be in the hands of the most helpless and the most indigent, as why it should be in the hands of the most powerful and the most opulent.

Why exclude the whole female sex from all participation in the constitutive power?

Because the prepossession against their admission is at present too general, and too intense, to afford any chance in favour of a proposal for their admission.

On the ground of the greatest happiness principle, the claim of this sex is, if not still better, at least, altogether as good as that of the other.

The happiness and interest of a person of the female sex, constitutes as large a portion of the universal happiness and interest, as does that of a person of the male sex.

No reason can be assigned, why a person of the one sex, should as such, have less happiness than a person of the other sex.

Nor, therefore, whatsoever be the external means of happiness, why a female should have a less portion of those same means.

If, in this respect, there were a difference, the principle of equality would require, that it should be rather in favour of the female than of the male sex: inasmuch as there are so many causes of suffering which do not attach upon the male, and do attach upon the female sex: such as pains of gestation, of parturition, labour of nurturition, periodical and casual weaknesses, inferiority in all physical contests with the male sex, and loss of reputation in cases where no such loss attaches upon the male.

If the possession of a share in the constitutive power, be a means of securing such equal share of the external means of happiness, the reason in favour of it, is therefore at least as strong in the case of the female sex, as in the case of the male: it always being understood that the voting is in the secret mode.

The reciprocal seduction that would ensue in the case of a mixture of sexes in the composition of a legislative or executive body, seems a conclusive reason against admitting the weaker sex into a share in those branches of power: it would lead to nothing but confusion and ridicule. But if this infringement on equality be considered as necessary, regard for the principle of equality affords another reason, not merely for admitting the female sex to an equal share in the constitutive, but even to a greater share than in the case of the male.

Again, in domestic concerns, males derive greater power from physical force: here, then, is a means of injury: for security against it, if in respect of political power, there be a difference, it should rather be in their favour than in the favour of males.

Admitting the comparative inaptitude of the female sex, with reference to the legislative and executive functions, no cause of inaptitude on their part applies to the exercise of a share in the constitutive function. In this case no demand for any appropriate active aptitude has place. As easily can a female give a piece of card to be put into a box as a male: as easily can she receive advice as to the disposal of it as a male—as her father, husband, brother, or son.

The custom by which the prepossession has been produced, is a custom that had its rise in a state of society altogether opposite in this respect to the present. The military power being necessarily in the hands of the male sex, the political power followed it. Males were free to go everywhere. Females found full occupation at home, and could seldom, consistently with safety, pass to any considerable distance from it, except with males to protect them.

No reason has ever been assigned why, in respect of intellectual aptitude, this half of the species ought to be deemed inferior to the other. As to intellectual aptitude, considered as applied to the field of thought and action at large, two points require to be considered; in the first place, in how small a degree the superiority is on the side of the male sex: in the next place, how small the number of the female sex, whom laws and institutions have left unexcluded from the competition, in comparison with those whom they have excluded.

This custom of exclusion has been departed from in the case where the power is of the highest grade. In countries in which the sex is not admitted to the smallest share in the constitutive power, it is admitted to the whole of the executive, coupled with the largest share of the legislative, and that without any constitutive power above it. And of experience, in England, as far as it goes, in this the highest rank of operative power, the decision is more in favour of the female sex than of the male. In intellectual aptitude, Elizabeth of England showed herself in an incontestable degree superior to her immediate successor, and even to the nearest of her male and adult predecessors. If Anne was weak, she was not more so than her two immediate successors, both males. If Mary put men to death for what was called religion, so did her father, and so did her next male successor: if Queen Mary put people to death for what was called religion, so did Lord Chief-Justice Hale, the hero of English lawyers, for what was called witchcraft.

In no two male reigns was England as prosperous as in the two female reigns of Elizabeth and Anne. As to Anne, whatever was the cause, it was more prosperous than that of her immediate male predecessor,—a man as unamiable as she was amiable.

Thus has England been governed by female monarchs, three:* Russia, four: Austria, one: Sweden, one: Portugal, one: France, though

* Queen Victoria is the fourth.—*Ed.*

not once by a female monarch whose reign continued during life, has been governed by several female monarchs whose reigns, under the name of regencies, have lasted for a long course of years.

England, also, gives the example of a case, in which in the choice of a sub-legislature of twenty-four members,* governing with absolute sway, in subordination to the supreme legislature, sixty millions of subjects in British India, females have an equal share with males. Thus, while gnats are strained at, camels are swallowed.

Can practical good in any form be mentioned as likely to be produced from the admitting the female sex into a participation of the supreme constitutive power?

Yes. The affording increased probability of the adoption of legislative arrangements, placing sexual intercourse upon a footing less disadvantageous than the present to the weaker sex.

At the same time, there is no political state that I know of in which, on the occasion of any new constitution being framed, I should think it at present expedient to propose a set of legislative arrangements directed to this end. Before the state of the legal system had been made, on almost all other points contributory in the highest degree to the greatest happiness of the greatest number, scarcely could any prospect be afforded of its being rendered so as to this. The contest and confusion produced by the proposal of this improvement would entirely engross the public mind, and throw improvement, in all other shapes, to a distance.

II. *Secrecy.* When suffrage is secret, no man who wishes to give a vote, and is not, by want of time or length of distance, debarred from giving it, is debarred from giving it in favour of the person whom he prefers, by fear of loss of money or friends.

No man is made to suffer, or is exposed to suffer, loss of money or friends, on account of the vote he has given, or any vote he has forborne to give.

In so far as the course taken by men's suffrages is known, some men are, by fear of loss of money or friends, debarred from giving any votes at all: some men who would otherwise have given their votes in favour of a certain person, are, by fear of loss of money or friends, debarred from giving their votes in favour of that same person: some men who otherwise would have given their votes in favour of a certain person, and thereby against another person, his rival, are, by fear of loss of money or friends, not only debarred from giving their votes in favour of the person they approve, but compelled to give their votes in favour of a rival of his, whom they disapprove.

A man who being a candidate for a situation, for the filling of which suffrages are given, declines using his endeavours to cause them to be delivered in the secret mode, proves thereby that the following wishes, one or more of them, have place in his breast:—1. To see men who have each of them a right to vote, debarred, in indefinite numbers, from the exercise of that right. 2. To see men who, if free, would have voted for a rival of his, debarred from doing so. 3. To see men who, if free, would have voted for a rival of his whom they approve, not only debarred from doing so, but by fear, as above, compelled to vote in favour of himself, in whatsoever degree he may have been the object of their disapprobation.

III. *Equality.* By equality of suffrage is meant equality of effect, as between a suffrage given in this or that one election-district, and a suffrage given in this or that other election-district.

Understand here by equality nothing more than the absence of such degrees of inequality, as would be productive of some one or more evils of the following description to a sensible amount:—

1. In this or that election-district, the number of electors so small that by intimidation or corruption freedom of suffrage might be destroyed. By secrecy of suffrage, intimidation might be excluded. But unless by the multitude of the electors, as compared with the value of the situation filled, and the quantity of the means of corruption in the hands of candidates, to exclude corruption is impossible.

2. In this or that election-district the number of the electors so great, that in comparison with a vote in this or that other election-district, a vote is in a sensible degree inferior in value. This being the case, all voters in such over-peopled district, feel a sensation of injury from the comparison of their situation with that of the electors in an under-peopled, or even in an adequately peopled district.

3. Proportioned to the smallness thus produced in the effect and value of a vote will be the probability of its being outweighed by the loss of time necessary to the delivering of it. Upon all in whose instance the advantage of voting is thus outweighed by the inconvenience, a virtual exclusion is thus put.

4. The greater the distance between the place at which the votes are delivered and the place of an elector's abode, the greater is the inconvenience in respect of time lost, with or without concomitant expense. Evil 3, is common to town and country districts: *this* evil is peculiar to country districts.

IV. *Annuality.* By annuality of suffrage, understand adequate frequency of recurrence on the part of the election process; and thereby of the conjunct exercise of the right of removal, and the function of appointment with relation to the situation in question: but, instead of adequate frequency of recurrence, say annuality of recurrence: instead of an indefinite expression, a definite expression, employed for the sake of

* The Directory of the East India Company.—*Ed.*

clearness of conception, accuracy of expression to a certain degree sacrificed.

No one will undertake to say, at any rate no one will be able to prove, that, by the addition of this or that short term, say a day, to the term of a year, any sensible evil in this or that determinate shape, could be produced: and so in the case of this or that other small number of days to an indefinite amount.

No one will undertake to say, or at least, no one will be able to prove, that, by the subtraction of this or that short term, say a day, from the term of a year, sensible evil in this or that determinate shape would be produced: and so in regard to this or that other small number of days to an indefinite amount.

No one will undertake to say, or at least no one will be able to prove, that there cannot be any state of things in which it would not be for the advantage of the whole body of constituents, that, at the end of some shorter length of time than a year, reckoning from the day of election, the conjunct powers of removal and appointment should not, by the act of some person or persons chosen for the purpose, be called forth into exercise.

Section VIII.

Moral Aptitude is inversely as Altitude in the Scale of Political Influence.

Education being supposed not deficient nor subsistence wanting, aptitude, with relation to the exercise of political power, is inversely as the altitude of a man's place in the composite scale of political influence. This composite scale is composed of three elementary scales—the scale of opulence, the scale of power, and the scale of factitious dignity.

In the scale of opulence, language has not yet afforded, as in the scale of temperature, denominations designative here and there of the different degrees. No precise station, therefore, can here be designated by the terms opulent and unopulent. All that can be expressed is their relative stations: viz. that in the station marked by the term opulent, the quantity of the matter of opulence is greater than in the station marked *unopulent*.

With relation to useful qualities in general, and in particular with relation to those of which appropriate aptitude with relation to political functions in general, is composed, the following are the considerations by which, on the part of the opulent, inferiority in appropriate aptitude, considered in all its branches, stands indicated:

The greater the quantity in value of the services which, at the hands of those on whom his comforts depend, a man has at command, without rendering any correspondent services in return, services positive and negative together—positive, consisting in the exercise of positive beneficence,—negative, consisting in the exercise of negative beneficence, that is to say, forbearance from injury and annoyance in all their shapes,—the less the need he feels for the exercise of such beneficence on his part.

So much for moral aptitude: now as to intellectual aptitude and active talent.

The greater the quantity in value a man has of those good things which are the fruits of the labour of others, the less the need he has of labour on his own part; the less therefore will his frame, whichever part of it, bodily or mental, be in question, be inured to labour. But other circumstances equal, intellectual aptitude will be in proportion to labour.

Accordingly, in every department in which the waste and corruption of government has furnished pay enough for both, you will see two sorts of men in pairs: viz. the opulent man, who bears the title and cuts the figure, doing nothing of the business: the unopulent man, who bears no title, cuts no figure, and does all the business.

And so likewise in regard to active aptitude.

The greater the exercise given to the will, the less the exercise given to the understanding.

The monarch is all will: understanding is wanting to him. Will occupies itself about the end, understanding about the means. All the monarch has to do is to look out for ends: for objects suited to his fancy and his taste. To find out means for the obtainment of those objects belongs to others: to the two-legged and featherless instruments of his pleasure.

In England, of the Right Honourable House—of the Honourable House, the members are, each of them, a fraction of a monarch, a monarch in miniature. Accordingly, in neither situation has reason, fruit of the labour of the understanding, any effective place. By collision of wills it is, not by collision of understandings that every result is produced. When argument, or anything which has the semblance of it, is exhibited, it is only for appearance sake: for any such delusion, as it is thought there may be a convenience in propagating without doors.

The higher the degree of opulence, the less the degree of sympathy in the breast of the opulent for the unopulent: for that portion of mankind, in behalf of whom the demand for such beneficence as it may be in his way to exercise, is greatest.

Correspondent to, and intimately connected with, sympathy of affection is sympathy of conception.

By, and in proportion to, sympathy of affection, a man is disposed to add to the enjoyments, and subtract from the sufferings, of the objects of his sympathy.

Proportioned to the correctness, clearness, and completeness of the *conception* a man has of those enjoyments and those sufferings, (his degree of sensibility being given,) is the strength of the sympathy of affection with relation to those same objects of his sympathy.

Relative sensibility being wanting, sympathy of affection may be equally wanting, al-

though sympathy of conception be entire: but in so far as sympathy of conception is wanting, sympathy of affection has no place.

For all bodily pains, sympathy of conception must, on the part of the experienced surgeon, be greater than on the part of an average man. But if his sensibility, and consequently if his sympathy of affection were so likewise, he would not be fit for the exercise of his art.

Want of sympathy of conception concurs with the feeling relative to independence, in destroying in the breast of the opulent man sensibility, and with it beneficence, positive and negative, with relation to the unopulent: he has no need of their services—their free and gratuitous services: he has no conception of their wants: he has no feeling for their wants.

Where, at the first commencement of the habit of witnessing, (with or without the habit of producing,) sufferance, sympathetic suffering has been produced by the sight of it,—the continuance of the habit will sooner or later extinguish the sympathy. It is thus extinguished, for example, as above-mentioned, in the surgeon, or he would not be fit for the exercise of his beneficent art. It is thus nearly, if not altogether, extinguished, supposing it originally to have had place, in the breast of the military conqueror, or he would not be fit for the exercise of his maleficent art. The mother who has lately lost a son in battle, has some conception of what the miseries of war are, and feels and grieves accordingly for those who are partakers of them. Under a monarchy, absolute or limited, among the functionaries in the higher ranks, commencing with the monarch, so confirmed is the habit of hearing of men, by thousands and tens of thousands, slaughtered, or reduced from happiness to misery by the operations, by the orders given by these their rulers, (for the purpose of giving further and further extension to their own power, factitious dignity, and opulence,) that no greater portion of sympathetic suffering is produced in such breasts by the tidings of any such catastrophe, than has place in the breast of a gardener while he is setting his foot on a swarm of caterpillars. The same monarch in whose breast the sight of a favourite suffering from a hurt experienced in the course of a frolic, had in early youth produced an almost equal pain of sympathy, will, as ambition increases, and sympathetic sensibility decreases, receive with indifference the news of a limb lost by that same favourite, in company with thousands of limbs, and as many lives, lost by others in the course of a battle, from which the power of the wholesale manufacturer of human misery is regarded as receiving increase.

As it is with the universal superior, so it is with the subordinates: quantities and degrees being proportional to the place occupied by them respectively in the gorgeous scale.

Remains to be shown how it is, and whence it is, that the state of moral appropriate aptitude with relation to the function in question, being in the exalted situations in question, such as has been described, the conception commonly entertained in relation to it has been so opposite to the state of things as thus described, and thereby so incorrect and opposite to truth. The cause of this *delusion* may be seen in the influence exercised by the high alliance, by the confederacy of power, factitious dignity, and excessive opulence; partly through the medium of *corruption*, partly through the medium of force and intimidation; partly through those discourses, written as well as oral, particularly those presenting themselves constantly to view in the written form, by which information is conveyed respecting this part of the field of thought and action, in which instruction is sought, and by which opinion and affections are moulded.

Take, in the first place, opulence, even in that minor degree of force, with which it operates when the field of its operations is confined to private life. Proportioned to the quantity of the matter of opulence which a man has at his command, will be the quantity in which those who are in habits with him, or entertain a prospect of being in habits with him, may expect to share. Proportioned to the intensity of their respective appetites for such share, will naturally be their endeavours to procure for those appetites their appropriate gratification according to all such means as are safe, and not disreputable, as they see within their reach. Proportioned to the success of such their endeavours, will be their own self-satisfaction, and their gratitude as towards the author of it, can scarcely fail, in some way or other to be the accompaniment of it. In action, as well as discourse, more particularly in discourse (as being the cheaper article) will this gratitude, real and feigned together, find expression and give itself vent.

But as, with the power of granting, the power of refusing receive correspondent increase; so with that love which produces gratitude, will increase that fear which produces respect. Moreover in the hands of the opulent, with the negative power of refusing favour to those who have not been and those who have ceased to be the objects of their regard, is conjoined, in no inconsiderable degree, the power of doing positive evil to those who are the objects of their positive aversion. By the operation of all these causes taken together, thus intimate is the connexion between the idea presented by the word rich, and the idea presented by the word respectable. Of the effect produced by this association on conduct, discourse, and, to no inconsiderable degree, on opinion, and affection, an exemplification may be seen in the picture of the parasite, as drawn by the earliest of the dramatists whose works have reached us.

If such and so great be the ordinary influence and effect of the matter of wealth, in the hands of individuals, distributed in parcels of

an ordinary bulk, what must it be when accumulated in an immense mass, in company with supreme power, and the highest lot of factitious honour, together with the manufactory, in which all inferior lots of these instruments of influence are fabricated—all placed in the same hand! If such be the influence of wealth when reckoned by thousands, what must it not be, when reckoned by millions!

As long as wealth and government have had existence, the powers of poetry and oratory have been employed in singing the praises of the powerful, the dignified, and the wealthy. While the effusions of praise have thus had free scope, with reward in every shape to pay for them, those of censure have all along and everywhere, been suppressed by every restraint which it was in the power of punishment to apply.

While the eulogies of Virgil and Horace were rewarded with lavish hand, Ovid for this or that little bed-chamber anecdote, was sent to pine in exile. If the quantity of virtue practised, were to be measured by the quantity of virtue attributed, the most selfish and hard-hearted tyrants would be the most virtuous of philanthropists. Where profusion alone, and without cruelty, marks the character of the despot, gratitude and hope are the only brokers the exertions of which will be occupied in the filling the cornucopia of praise: where to the influence of those agents that of fear is added, praise extorted from enemies will add itself to the praise poured in by friends.

In the eyes of the undiscerning and unscrutinizing multitude, it may now be seen how impossible it is, that receipt of praise should fail of being considered as conclusive evidence of merit, virtue, excellence. Whatsoever be the name of the fictitious entity, created by praise, to represent the subject, which it undertakes to magnify,—whether it be merit for example, or virtue, or excellence,—thus it is, that in proportion to the quantity possessed by any man of this efficient cause, and title to praise, namely wealth, will be the quantity of the fictitious entity in question, supposed on that account to be in his possession. On the part of those by whom any of those tokens of wealth, by the appearance of which, the existence and possession of it, are generally regarded as being proved, thus it is, that an opinion will really be entertained that, in the composition of his mind, a proportionally preeminent quantity of this admirable and admired quality, by whatsoever name it may be styled, will be found.

It has now, it is hoped, been put sufficiently out of doubt, how far any such opinion considered in the character of a general one, is, from being in any agreement with the truth: and that the truth of the case, lies not in this opinion, but in the reverse of it: that in so far as any such opinion is entertained, delusion has place in the breast of him by whom it is entertained: and in so far as for the propagating of this opinion, endeavours are employed, endeavours for the propagating of delusion, are employed.

What is now moreover, it is hoped, sufficiently put out of doubt, is that, by every additional particle,—not only of actual wealth, of actual power, and of actually existing factitious dignity,—but of everything which, in the character of a token, can contribute to their increase in the hands of an individual, possessing any considerable share of political power,—the force and efficiency of all this stock of the instruments of delusion, will be increased.

What at the same time is sufficiently out of dispute is,—that in every such instrument of delusion, may be seen, and truly seen, an instrument of misrule: a means of exercising it: and thereby an encouragement and incitement to exercise it.

To support the dignity of the crown, to add splendour to the crown, to add lustre to the crown,—so many phrases upon the strength of which money wrung from a starving people, by scarcely supportable taxation, is, day by day, by the creatures and dependants of the monarch, called for, without measure and without shame: called for, and granted accordingly, with what effect? With the effect of labouring in vain to fill the ever-leaky cup of his personal gratification, of giving perpetual increase to the delusion, by which the seat of necessary depravity is converted into the seat of imaginary and fabled excellence, and in making every day fresh and fresh advances towards the accomplishment of the constant object of all endeavours—the conversion of a scarce disguised, into the more simple and convenient form of an undisguised and openly avowed despotism.

It has been seen, to what inevitable necessity, by the original and unchangeable nature of man, an irremoveable chief magistrate, call him duke, call him consul, call him king, call him emperor, call him what you will, is an enemy to all that are subject to his rule, with the exception of those who are sharers with him in the sinister profit.

What at the same time is no less manifest is, that by every step by which any advance can be made towards dissolving the disastrous association, by which the instruments of vice and misery are palmed upon mankind as the necessary instruments of security and universal happiness, a real service, and that a most important one, will be rendered.

The notion, therefore, that in those who are possessed of the powers of government, there is more virtue than in those who have no share at all in the government, is an erroneous one: so far is the position from being true, that the very reverse is true. In this statement there is nothing of exaggeration: on the contrary, it is matter of the strictest demonstration. The mischievousness of an act, whereby human suffering is produced is, as the magnitude of

the suffering, multiplied by the extent of it—by the number of the individuals to whom it extends. In the case of a man who witnesses it, and who is conscious of the part he has in the production of it, the depravity, the moral turpitude, that has place in his mind, increase in the same ratio as does the mischievousness of it, as above. Of virtue, of depravity, of moral turpitude, there exists not any other intelligible test or measure: unless it be, in the case of this mischievous act, the degree of deliberation attendant on the commission of it.

Compared with each other, by this test and this measure, in a country governed by corruption and delusion,—the resistible and punishable malefactors who are styled criminals, and treated as such, with the irresistible and unpunishable malefactors, styled rulers, by whom they are treated as such, the worst of criminals will, in every intelligible sense of the word worst, be found to be men of transcendant virtue in comparison with those on whom the praise of virtue is so unsparingly and indefatigably lavished.

Another notion is, that opulence is an antiseptic: that, in proportion to a man's opulence, will be the improbability of his wishing to add to it by depredation.

To him who has lived all his life upon £100 a-year and no more, £150 a-year is opulence: reduction to £50 a-year is ruin.

To him who has £10,000 a-year, it requires an addition of £5000 a-year to produce a sensation equal in intensity to that produced in the case of him who has but £100 a-year, by an accession of £50 a-year.

Thus it is, that instead of operating as a security against the propensity to depredation, opulence, accompanied with the habit of large expenditure, operates as an incentive. The greater the quantity of money which a man has been in use to expend, the greater the quantity, meaning always the absolute quantity, of that which he craves: cupidity does not sink, but rise with opulence.

Yet the common opinion—the vulgar error it may well be called, in so far as the profession of it is sincere—is the reverse. The notion is, that the man whose habitual expenditure has been large, is, on that account, so long as the means of it continue undiminished, not so likely to seek to increase it by depredation to so large an amount as the man whose habitual expenditure has been small. This notion, whence comes it? From this,—from the natural tendency which, in every situation, man has to measure other men by his own measure: to assume that in a different situation, be it higher or be it lower, a given quantity of money, either in possession or in expectancy, will produce in the breasts of men sensations the same in intensity as in that situation he himself occupies.

From this assumption, one consequence deduced by the man of £10,000 a-year is—that because reduction to a £100 a-year would to him be utter ruin, and reduce his mind to a state of wretchedness; restriction to £100 a-year would, in the instance of a man whose expenditure had not been used to exceed that sum, be productive of a sensation of distress as intense, or not much less so.

Another is—that because the rich man would not forfeit or risk his reputation for probity for the sake of £50 a-year, being half of the amount of the other's income, therefore neither would he for £5000 a-year, being half the amount of his own income.

In conclusion,—the plain truth of the matter is, that in respect of the strength of propensity, desire, and endeavour, there is not much difference between the man on the highest and the man on the lowest level in the scale of opulence. But that in so far as any cause of difference can be found, it is on the part of the most opulent, that,—in so far as the strength of it is measured by the absolute quantity of the money which, at the expense of others, a man will endeavour to acquire,—the propensity, desire, and endeavour, is likely to be most strenuous—to be less effectually repressed by any arrangements that can be devised. That, therefore, in office, so far as concerns abstinence from undue profit, the chance of good behaviour on the part of the office-bearer is the greater, the less the quantity of emolument which he is content to accept in retribution for the burthen submitted to in respect of the obligation of discharging the functions of it.

If this reasoning be correct, the rule, in point of practice, should accordingly be—if any man is found who is content to pay money for the privilege of performing the functions of it, so much the better: and unless for special reason to the contrary, let him who will pay highest for it have it.

If no competent person can be found who will pay anything for it, or who will serve in it gratis, let him have it who requires the smallest quantity of emolument for performing the functions of it.

Another reason for reducing all official emolument to a minimum is this, that with the quantity of the emolument attached to the office, the quantity of influence applicable to sinister purposes in general, and in particular, to the purpose of obtaining support in case of malversation, increases.

Of this bad effect from excessive emolument the mischief is exemplified in the most manifest and striking manner in the case of the monarch in a monarchy.

As in that highest stage, so in each inferior stage in the scale of power and opulence.

Thus it is that, under the British government for example, in all the superior offices, responsibility in the penal sense is a perfect mockery, a mere empty name.

CHAPTER XVI.

SUPREME LEGISLATIVE.

Section I.

Legislature—single or divided.

The hands in which the supreme legislative power is lodged ought to be located and dislocated by the great body of the people.

The hands in which this power is lodged ought to be, not those of a single individual but those of a numerous body.

Of this body the members ought to be located and dislocated by the electors of so many territorial districts, into which, for this purpose, the whole territory of the state ought to be divided.

This position being considered as established, comes now the question—whether the institution of one such numerous body being determined upon, one other, or any more than one other, ought to be added?

The answer is—not so much as one other: in which answer is included a negative upon every greater number.

If, in addition to this first body there be a second, this second will either be a body having an interest not in any way opposite to the interest of the great body of the people, or a body having an interest opposite in this or that way to the interest of the people. Under the greatest-happiness principle to say, that among the functionaries sharing in the supreme legislative power, a body having an interest opposite to that of the people, ought not to have place, is as much as to say, that it is against the interest of the people to be under the government of men having an interest opposed to theirs, and in a condition to give effect to that particular interest at the expense and by the sacrifice of that universal interest.

Why not give to a *permanent* aristocratical body, kept up by hereditary succession, and increasable by the monarch, a negative on all laws, with or without an initiative? Why not, as in English practice and language, two houses? Because the evil effects are many—the good effects none! Because in every member of such a body, the elements of relative inaptitude are the same in kind as in the situation of the monarch, and howsoever in comparison of that situation inferior in degree, yet at all times sufficient to secure for the joint benefit of king, lords, and commons, at the expense of the people, the consummation of the sinister sacrifice. Whatsoever tends to give increase to the amount of that sacrifice will be sure of their assent: whatsoever tends to apply restriction to it will be sure of their dissent.

Against the just resentment of the people, this body will serve as a screen to the monarch.

To the splendour played off by the monarch upon the imagination of the people, the members of this aristocratical body will add whatsoever factitious splendour their persons are encompassed with.

No advantage bearing reference to the greatest happiness of the greatest number—no such advantage did man ever attempt to bring to view, in the character of a reason for a House of Lords: for an assembly composed of members of the privileged order sitting by hereditary succession or for life.

Benefit to the monarch, yes: benefit to the aristocracy, yes: to the monarchy it gives stability: to the aristocracy, in all its parts, profit by increase of power; profit by a share more or less considerable in legalized depredation: the house will not let the king come in for a share, unless the king will let the house come in for a share.

As to the greatest number—as to the great body of the people: greater would be the advantage to them if wolves in equal number, or in a number by ever so much greater, were imported from a wolf country, and turned out loose. The wolves would in process of time be killed, and for every wolf killed there would be a wolf skin, which would be good for something. The Lords, though each of them would do more mischief than many wolves, would not be killed: and if they were killed, *their* skins could not be put to any use.

There remains therefore, as the sole subject of the question, a second body, having an interest the same as that of the people—the identity or coincidence between the two interests being provided for, in the case of this second body, upon the same principles as in the case of the first.

First comes loss of time: the delay between the passing of a project by one house, and the definitive passing of it by both. In a constitution which has two houses, evil in this shape is susceptible of actual measurement: the journals of the two houses will show it.

Waste of the official time of various functionaries engaged in the debate.

Expense, to wit, of remuneration, for the members of the second house. This, in so far as it has place, belongs to the list of sensible evils, more plainly sensible than the above. This, however, is no place to enlarge upon it; for it is not essential to the two-house system: if attached to it, it is attached only by accident. Suppose the second house to wave acceptance of all remuneration in a direct shape, and not to seek any in an indirect shape, this evil is extinguished.

Prevalence given to the will of the minority, over that of the majority, to wit, in both houses taken together. In this case, the particular evil effects are not matter of certainty: they are but presumable, however well grounded the presumption.

Unless some special probable cause of error be assigned, applying to the majority, and not applying at all, or not in equal force, to the minority,—the probability of right judgment

will in every instance be in the exact ratio of the number of the majority to that of the minority. On this supposition it is that in every instance in which the act of the whole is made to consist of the act of the majority, the act of the majority is acted upon as if it were the act of the whole.

Say, for example, number of members in the one house 300; in the other 40: 21 in the smaller house suffice to overrule the will of 19 in that same house, added to the 300 in the other house.

In every case, if there be any reason for giving the preference to the judgment and will of the few to that of the many, it lies upon those who are for thus departing from the general rule to assign special and preponderant reason for such departure. Against it, the strength of presumption is considerable. Of the members of the first house, the choice will of course be made upon such principles as are regarded as calculated to send in the aptest members: aptest in the aggregate of all the parts of appropriate aptitude: they are regarded as those in whom, in consideration of that plan of location, more confidence may with propriety be placed, than upon members located upon any other plan. Add now a second house: either the location is performed upon the same plan, or upon a different one. If upon the same plan, then comes the incongruity of giving to the minority the prevalence over the majority, and without any reason to show for it. If upon a different plan, then by the supposition it is either worse, or at best no more than equal: but if no more than equal, the whole trouble attendant upon it is thrown away.

Another evil is the prevalence of a particular and sinister interest on the part of the second house, whatever it be. Here, too, the sensible evils are but matter of presumption, as in the former case. But whether the presumption be not here also a strong one will be seen.

Be the two houses what they may, in the course of practice, one or other of them will acquire and preserve the lead. To that leading house will application in general be made: to that house will every person who has a project to bring forward look in preference: comparatively speaking, the other house will remain in a state of nullity: to the house of greater activity will the merit of all measures looked upon as beneficial be ascribed. In proportion as the scheme of election is favourable to the universal interest, the measures proposed and approved by the larger efficient house will be beneficial. If there are any that are otherwise, on this supposition the smaller house (the scheme of election being the same) is altogether useless. But be the acts of the larger house ever so beneficial to the community, the majority of the smaller house will not naturally be content to remain in a state of disregard. To acquire and maintain a certain degree of respect, they will take the only course which, according to the supposition, is within their reach: they will set themselves to oppose, and clog, and delay on every occasion those good measures, in the glory of which they cannot share. Reasonable arguments not being furnished by the nature of the case, they would betake themselves to unreasonable ones: against each measure, as it came into the house, they would play off the whole artillery of fallacies. Hence arise the evils following: In the case of every good law thus opposed, delay, vexation, and on the part of individuals interested, more or less expense substituted for that time to the expected benefit: in proportion to the number of instances in which the bad arguments thus *prevail*, the good that would have been produced by the good law thus rejected, excluded altogether.

The next evil is the complication: Of the art and science of legislation, the matter, even supposing the simplicity of it is maximized, would still be more complicated than could be wished—complicated enough to be productive of evil in no inconsiderable abundance.

Even supposing sinister interest out of the question, the more complicated the matter, the greater the number of those who are unable to see clearly into it; and even to those who do see into it with the utmost possible degree of clearness, the greater the mass of time and labour expended on it.

But the more complicated it is, the more easy will it be for those who apply themselves to seek a sinister profit to themselves at the expense of the rest of the community, to succeed in such their endeavour, to wit, by reason of the inability of those whose interests are thus sacrificed—the inability of seeing into and opposing those same mischievous designs.

There will also be an increased facility afforded to corruption.

The susceptibility as to corruption has been already stated as inherent in the constitution of a representative democracy, as well as in that of every other form of government. In every state there must be an administrative authority; and in every state, the members of the legislative authority will be able and inclined to exchange favours with those of the administrative, and to join with them in a system of depredation and oppression at the expense of the people. True, the aggregate value of these favours is here minimized; but minimization is not extinction. The aggregate value of these favours being given, and also the condition in life of the persons to be operated upon by them, their corruptive power will be inversely as the number of those persons: and in the ratio of the population of the two houses, in the smaller house, the number will be less than in the larger.

Of itself, the second house cannot establish anything; but there is not anything which it cannot keep excluded. The efficient causes of corruption being continually in action, and

the effect of them continually on the increase, —sooner or later, unless obviated, they cannot fail to destroy the constitution, and substitute to it a corrupt despotism. But whatsoever be the remedies by which the evil is capable of being averted, that which the second house cannot but have in its power, is to prevent the application of them.

If it be established that there are to be two chambers, out of this single circumstance spring a swarm of questions, pregnant, all of them, with doubts and difficulties. With respect to the *whole* field of legislation taken together, shall each have the initiative, or shall one of them alone, and which, have the initiative, and the other have the negative!

Or, with relation to *certain parts* of that field, shall the initiative be possessed exclusively by one, and which of them! Here, then, comes the necessity of lines of demarcation, and thence, not only certain complication, but probably continual contest and dissension.

In the French constitution of 1815, the sole initiative is in the monarch. Of course he will never originate any measure the effect or tendency of which will be to diminish his power, however detrimental it may be to the happiness of the nation: on the contrary, his constant endeavour will be to give increase to his share in the various instruments of felicity.

Lest the additional chamber should be regarded as useless, some special reason must be found for the institution of it. Accordingly, for this purpose, a division of the branches of appropriate aptitude is brought to view, and assumed to be applicable. Both chambers being assumed to be provided in sufficient amount with appropriate moral aptitude, the advantage in respect of active aptitude, is the supposed attribute of the one; in respect of intellectual aptitude, of the other: in which latter case, to render it the more imposing, the varnish of antiquity will be spread over it, and it will be called wisdom. Meantime, for rendering wisdom, whatever is meant by it, more abundant in one chamber than in another, the contrivance is to require that, in that which is to be the wisest, the members shall not, any of them, be of less than a certain age:

Only in so far as moral aptitude has place, is intellectual contributory, or otherwise than detrimental to the aggregate of appropriate aptitude: in so far as his object is particular and sinister interest, at the expense of universal interest, the more knowledge and judgment a man has, the more mischievous will he be. But, in so far as there is any difference, youth has much better pretensions to the being regarded as the seat of appropriate moral aptitude—of *virtue*, to speak in rhetorical language —than a more advanced age has. In a ratio which is the inverse of the degree of altitude in the scale of age, the mind is susceptible of that degree of excitation, (in French, *exaltation,)* of which self-sacrifice, sacrifice of immediate self-regarding to social interest, is the result.

In so far as regards intellectual aptitude, needless, with reference to this its professed purpose, is, in the present case, this supposed security. Take any age, for the age short of which, deficiency in the article of wisdom is to be regarded as preponderantly probable: say, for example, twenty-one years of age. By no such deficiency can any sensible evil be produced, otherwise than in the case in which the individuals labouring under it compose a majority. But that in any number approaching to a majority, these supposed unripe minds should have place in any body, constituted as that in question is here proposed to be, is altogether improbable. Were it even life at large that were in question, the longer a man's life has been, the more numerous will have been the opportunities which his appropriate aptitude, whatever it be, has had of making itself generally manifest. But if this is true, as applied to life in general, more particularly true will it be, as applied to political life.

In the United States of America, the legislature is divided into two houses, viz. the house of representatives and the senate. To this clog upon the proceedings of the representatives of the people, another objection may be seen in the mode of election, or, in other words, in the *source of location*. Had this second house been elected by the same electors as the first, the delay and expense would have constituted the most material, if not the only material, evils. But the electors or locators are not the members of the constitutive body, but a comparatively very small body—not more than one thirty-five-thousandth part of the members. The senators are located by the members of the local legislatures: so that instead of location by one stage of suffrages, here is location by two stages of suffrages. The members of the senate are, moreover, fixed in their situations for no less than six years: and in all that time, neither by the locators of the first stage, nor by the locators of the second stage, nor, in a word, by any authority whatsoever can they be dislocated. Thus, in no hands is there any efficient control over their conduct. In addition to all this, to make the complication more complete, the senate has a share in the supreme executive authority.

Here, then, is a sort of *aristocracy* organized: and in virtue of the double-stage principle, an aristocracy over which the members of the constitutive have no direct influence: it may, indeed, be said scarcely any influence at all.

The good effects ascribed or ascribable to the two-house system, may be resolved into this, namely, its acting as a remedy against precipitation.

In this case, as in the case of the articles on the evil side, the alleged good is mere matter of presumption; of actually existing good, not a particle does the observation adduce.

But the ground of this persuasion, what is

it—where is it to be found? In the principal house the members are by the former supposition so apt, that none more apt are to be found anywhere: along with this aptitude is the precipitation in question, whatsoever it be. In a state of dependence on the good opinion of their constituents, they are all of them: on every occasion they stand exposed to the censure of the public-opinion tribunal. The electors would on every occasion, in numbers as great as they themselves chose to make them, apply their veto or their drag in a direction conformable to the universal interest; the members of the other, the smaller house, would be on every occasion acting under the temptation to apply it, in furtherance of their particular interest. For avoidance of evil in this and all other shapes, to afford facility and thereby encouragement to the interference of the people at large, would have been the direct and most promising course: the other, of a veto and a drag in the hands of a smaller assembly, has no presumption to recommend it.*

Under this code, therefore, the supreme legislative authority is undivided. It is lodged, the whole of it, in one body, composed of representatives located by the supreme constitutive.

SECTION II.

Legislative Authority—why not in the Supreme Constitutive?

Why place the supreme legislative authority, not in the hands in which the supreme constitutive is placed, but in those of agents chosen by the supreme constitutive?

The reasons for this arrangement are such as must present themselves to every eye: they are not less obvious than conclusive—only for the sake of symmetry, if at all, can they be worth mentioning.

For themselves, the members of the constitutive authority, the great majority, cannot, in point of physical possibility, find time for the performance of this part of their business. They are those on whose labours, on whose disposal of their time in other ways, the national stock of the matter of subsistence and abundance depends: this necessary matter on which the members of the community depend for their existence.

By agents, therefore, must they perform this part of their respective businesses, or leave it unperformed: which is as much as to say, leave political society unformed.

To bestow, according to each one's leisure, an occasional glance on the conduct of such their agents, in the execution of their trust; this is what they can do, and this, as experience shows, is sufficient.

If to the performance of business for which by the nature of their situation the greater portion of the members of the community were excluded, the *whole* were in form, and by the terms of the law to be invited, the system would by this circumstance be rendered deceptious: power in profession to the greatest number, it would be given in effect to the thus surreptitiously favoured few.

SECTION III.

Election—why immediate?

Why render the mode of location immediate, not unimmediate?

Because from unimmediateness no benefits can be shown to result, while the evils increase with the number of the stages or degrees of election, interposed between the members of the supreme constitutive and the functionaries here in question, in this composite mode of location. These evils are:

1. Want of responsibility as towards their constituents: of responsibility by punibility, and of responsibility by dislocability. These functionaries once located, no control over them do their constituents preserve; no means of preventing them from becoming corrupt and occupied upon the sinister sacrifice—in the commission of depredation and oppression.

2. The intermediate locators (the immediate locators of the functionaries in question) being of course less numerous than the members of the correspondent electoral body, stand proportionally exposed to the influence of the mass of corruptive matter in the hands of the executive: as likewise to the influence of corruptive matter in whatsoever other hands lodged.

The smaller the number of persons exposed to corruption, (the quality of the persons being set aside,) the greater the corruptive force with which they are acted upon by a given quantity of the matter of corruptive influence.

The greater the number of intermediate ranks of electors, the smaller the number of electors in each rank, and thence the greater the corruptive force with which they are acted upon by the matter of corruptive influence.

Under the Spanish constitution the number of stages of election is three or four: the number of ranks of electors interposed between the immediate members of the constitutive body, and the members of the legislative, in the location of whom they bear a part, is one or two. A consideration of a local and temporary nature was the cause of the complication resorted to and produced in this case. To such a degree were the most numerous orders under the sinister influence of the clergy, that had they been the immediate locators of the members of the legislature, these members would in large proportion have been persons recommended by the clergy, and thence, of course, implacable enemies to reform in every

* For a further examination of the question between single and double chambers, see "Bentham to his fellow-citizens of France on Houses of Peers and Senates."—Vol. iv. p. 419.—*Ed.*

shape: reform in the particular shape contemplated, whatever it was, included.

Section IV.

Duties, peculiar and not peculiar.

Of cases, in which for want of due discrimination between the duties peculiar to itself, and those not peculiar to itself, the supreme legislature stands exposed to the danger of wasteful application of its time, examples are the following:—

Inquiry and decision as to a case in which property belonging to an individual is required to be transferred to government, for some supposed preponderantly beneficial national purpose: and thence as to the quality and quantity of the compensation due. In this case the appropriate authority would be, not the supreme legislative, but the judicial.

Taxation, for the expense of works, the benefit of which is confined within the limits of particular portions of territory: say of peculiar *districts*. In this case a more apt authority would be, that of the sub-legislature of the district.

So, if for any local purpose, common to some district.

So, a transfer for a merely private purpose: the arrangement being clearly conducive to the mutual benefit of all parties; and the transfer capable of being made without detriment to the general sense of security in respect of property. Here the appropriate authority would be the judicial authority of the district.

Of waste committed in the above shapes, exemplification, to a vast extent, may, at all times, be seen in English practice: and by the magnitude and uncertainty of the number of members present, added to the irresponsibility of their situation, (this judicatory being, as to all points of appropriate aptitude, rendered notoriously in the highest degree unapt, and in particular in respect of moral aptitude —in one word, by corruption,) a constant waste of legislative time is frequently accompanied by the evil of misjudication.

English practice affords another example, which is somewhat remarkable, namely, the grant or refusal by parliament, of the dissolution of the contract as between husband and wife. Here the waste of legislative strength, if not perhaps so extensive, is much more palpable. The principal efficient cause, is the conjunction of the particular interest of the lawyer tribe with that of the aristocratical tribe: the lawyer tribe, in respect of the enormous professional profit, of which a suit in this pre-eminently ill-constituted judicatory, has been made the source; the aristocratical tribe, in respect of the distinction it confers upon them—the capacity of defraying the inordinate expense, being of the number of the exclusive privileges, confined to the hands of pre-eminent opulence: and the superior importance thus ascribed to their family connexions. While a single tribunal suffices for seduction, the time of the legislature at the heels of two* judicial tribunals, is occupied by a divorce. Thus in England and Ireland. In Scotland, an ordinary judicatory suffices.

But in England, the government having for one of the maxims of its policy, the minimization of the time, employed by this compound body, in the performance of its appropriate duties, and accordingly to maximize the waste of it, waste upon this small scale, passes unobserved.

Section V.

Dislocability and Punibility.

The legislature being the seat of supreme operative power, for stemming the torrent of corruption, the first quarter to which the remedial arrangement should be applied, must obviously be the legislature: and with or without the additional expedient of preventing the re-election of members, the assigning to their power, no more than a short duration, may be apt to appear, at first sight at least, sufficient. This however, it will not be: for short as in that department, the term of service may be, such it cannot conveniently be in the executive department. Even if the objection on that account were got over, and the length of the service in that department as in the other minimized, still at the head of that department some person or persons there must be: and on both sides, the parties having the same interests, and the same means of pursuing them, and pursuing them with effect, the same results would follow. In their individual capacity the members of the legislature would have the same desire of providing for their families and friends: they would have the same means of gratifying that desire. The chief or chiefs of the executive being necessarily subject to the power of the legislative, exposed not only to the having the duration of their power, how short soever, made still shorter, but to be punished, and in the meantime vexed, in an infinite variety of ways, without the form of punishment, would never cease to feel themselves under the obligation of keeping on fair terms with the members of the legislative: in other words, of admitting them to a share in the sweets of corruption by locating them or their friends in lucrative and other desirable offices.

Unless by a revolution and consequent change in the constitution, this state of things could never be made to cease. In their corporate capacity the members of the legislature would administer the wages of corruption in the gross, to the executive chief or chiefs, in the shape of desirable offices and other shapes, and the executive chief or chiefs would ad-

* A common-law court, and an ecclesiastical court.—*Ed.*

minister them in detail to the members of the legislature, in their several individual capacities: in their corporate capacity they would give,—in their individual capacity, they would receive.

The members of the supreme legislative, must therefore be rendered punishable,—as, for the production of the effect intended, namely subordination, dislocability alone, will not be sufficient.

It fails in two cases:—1. If in consequence of the taste and situation in other respects of the individual in question, it is a matter of indifference to him whether he continues in such his office, or passes out of it. 2. If, in consequence of possessing what to him appears an adequate assurance of obtaining, by some breach of his official duty, a benefit, the value of which is, in his eyes, preponderant over the value of the office, taste and situation considered as above, such is his relative moral inaptitude, and such the strength of the temptation to which his probity stands exposed, that he determines to break the duty accordingly, and possess himself of the benefit.

Notwithstanding the height of the situation in the scale of power, neither does difficulty in any shape, nor danger in any shape, attach upon the application of either of the two bridles in question: namely dislocation and punishment. Divested of his brief authority,—divested by that means, and at the same time, of all sinister influence,—a member of the supreme legislative body, that is to say, he who had once been a member—would be just as easily tried, convicted, and punished as any the meanest citizen.

Yes, if by the constitutive, the functionary were undislocable and unpunishable: in either case the difficulty of the operation would be extreme, and the danger of the attempt, proportionable. This is as much as to say, in a monarchy, in every sort of monarchy.

A conception not less erroneous, than at first sight it is natural, would be, the supposing, that because by the care of the law, punishment is provided to be, in case of necessity, applied to functionaries of the class in question,—either the actual application of it, or the endeavour to make application of it, would be in any degree probable. By the very provision by which the eventual possibility of it is established, the probability of it is dispelled.

By the Anglo-American constitution, all functionaries—the highest and most powerful not excepted—are made punishable. For these forty years, during which these states have been in a state of independence, where has been the high legislative or executive functionary punished?—where has been the high functionary whom any man wished to see punished? Why has there never been that high functionary, whom any man wished to see punished? Because there has never been one who has offended. And no high functionary has offended, because there has never been one, who ever saw either any profit to be made by offending, or prospect of escaping punishment if he were to offend. In that country delinquency and punishment are twin sisters: for there, not only is infamy the punishment, but efficient and abundantly sufficient punishment.

SECTION VI.

Omnicompetence.

Why render the legislature omnicompetent?

Because it will the better enable it to give effect to the will of the supreme constitutive, and advancement to the interest and security of the members of the state.

Because the practice upon which it puts an exclusion is, in a constitution such as the present, pregnant with evil in all imaginable shapes.—Any limitation is in contradiction to the greatest happiness principle. An arrangement suppose, is proposed, which, in the unanimous opinion of the whole legislative, with the addition of the unanimous opinion of the whole constitutive, would be immediately contributory to the greatest happiness of the greatest number. For a certain length of time it cannot be carried into effect. Why? because it is repugnant to that which was the will of the constitutive at the moment at which this restrictive arrangement was established.

On one supposition alone can it be supported, namely, that on the part of the constitutive and legislative, at the time at which it received its establishment, appropriate aptitude had place in a greater degree than it can have place at any succeeding point of time: in particular, than at any point of time at which a proposition would be brought forward for some change of the number of those on which the restrictive arrangement in question would put a negative. The untenableness of this supposition has been already exposed.

To be employed in giving support and stability to evil in every shape is the characteristic property of an arrangement of this sort: to put an exclusion upon a good law—upon a law by which, if established, evil in some shape or other would be excluded: upon a law so plainly good, that this same restrictive arrangement is the only bar that, with any colour of reason, can be opposed to the enactment of it;—for, suppose the proposed law a bad one, the worse it is, the stronger will be the objection opposed by its badness, and for this objection there cannot be any need.

In the institution of this veto upon remedy and improvement, moral inaptitude—the fruit of sinister interest, and intellectual inaptitude, in the shape of self-sufficiency, wilful blindness, and obstinacy, act with conjunct influence.

Had their predecessors acted with like endeavour, and with correspondent effect,—these would-be tyrants over futurity, whoever they are—what place would have been left for the power, of which they are making such exercise?

Power thus unlimited, is it not too dangerous to be trusted to any body of men in the state?

No: it would be, if, of the power thus confided, the existence were not, in the instance of every individual, made dependent on the will of the greater number, and, in case of an abuse in the exercise of it, the functionaries in question rendered eventually punishable, as above.

With power thus unlimited, might not the legislative body exercise their power upon the members of the constitutive body, individually taken, in such sort as to prevent the exercise of the dislocative power in question over the members of the legislative body?

No: for in the case here supposed, the members of the constitutive body, on whose co-operation the giving execution and effect to the supposed ordinances of the legislative body depend, would forbear to give it: if some used their endeavours on that side, a greater number would use theirs on the opposite side. Upon their compliance or non-compliance, all power, as has been seen, necessarily depends. On any occasion towards producing, on their part, non-compliance, all that can be done by a constitutional code, is to give them the invitation. If by such invitation, power is not limited, by nothing else can it be limited.

In every case of every such restriction, the tendency is to produce evil to an unlimited amount.

In every case of every such restriction, the tendency is to produce more evil than good.

In no case is it in the nature of it to produce any positive good: in relation to the subject-matter in question, what it does is, under the notion of excluding evil, to exclude evil and good at the same time.

In no case is it likely to exclude any evil, that would not have been excluded without it.

Against all evil effects from want of appropriate aptitude on the part of the legislature of the future time in question, (which is the only reason that can be adduced in favour of the restriction,) the community is secured by the power herein given to the constitutive body, as above.

So obvious and incontestable are the absurdity and mischievousness of such a restriction, that a palliative has been employed for lessening the mischievous effects of it. This consists in setting limits to the time during which no change shall be attempted. In this case, the absurdity is not quite so flagrant, but it is not the less unquestionable: by being varied in shape, neither is the absurdity removed, nor the mischief materially lessened.

The case in which this dilatory system has been employed, is that in which a new constitution has been instituted. In this case, an acknowledgment has been made, that the makers of the constitution are not infallible: and thus the system has been in a considerable degree cleared of its absurdity, or at any rate, its absurdity of its flagrance. But as to mischievousness, whatsoever may have been the object, the tendency is still the same. A door is left for the admission of the remedy. But at what time? at a time at which it is either needless or hopeless.

The time at which application is made of the remedy, is the very time at which the constitution, of which it makes a part, receives its commencement: a time at which experience is not yet born. If there be a time at which the probable need of alteration is at its highest pitch, this is that time. If, notwithstanding whatsoever imperfection may have place in it, the constitution is at that time capable of maintaining its ground, and answering, not to say fulfilling, the purposes of its institution, much more assuredly will it at any succeeding point of time: and as to remedies, howsoever the direct and most essential ones are thus inhibited from being applied, yet to all such as are not included in the inhibition, the door, by the supposition, remains open. Not that it follows, that even any such palliative will be applied: for the case may be, that there are not any such as will in any degree apply to the purpose.

Be this as it may, if no subversive effect takes place at this earliest period, no reason is there for supposing that any such mischief will take place at any posterior period: insomuch, that if, with this limitation to it, the restriction is justifiable, equally justifiable would it be were the limitation omitted.

So much as to the needlessness of the restriction: restriction in respect of extent of competence, and limitation in point of time applied to that restriction,—the two arrangements taken together.

Now, as to the article of hopelessness. Whatsoever, under the newly instituted constitution, may be the influence and effective power of the newly constituted rulers, the more effectually it is regarded as answering its purposes,—or, to come more to the point, the better the people are satisfied with it,—the firmer and firmer will be their hold on the affections, fear and love taken together, of that same people. Suppose, now, that in company with the arrangements which have really had for their object the felicity of all, others have place, which have for their object, not the felicity of all, but the particular felicity of those same rulers, pursued at the expense of that of the people: what is the consequence? The longer the time is during which they have been in possession of the sinister advantage, the more and more confirmed the habit of enjoyment is; the stronger the hold, as it were, they have taken of it, the more strenuously opposed will they be to part with it: and by means of the circumstances just mentioned, during all this time, and in correspondent proportion, their assurance of being suffered to keep possession of it has been receiving increase.

By this unincompetence, by this negation of all limits, this also is to be understood, namely, that let the legislature do what it will, nothing that it does is to be regarded as null and void: in other words, it belongs not to any judge so to pronounce concerning it: for, to give such powers to any judge would be to give to the judge—to the locatee of the minister of justice, who himself is but a locatee of this same legislature—a power superior to that of the legislature itself.

But the case of an abuse of power on the part of the legislature is not, therefore, as has been seen, left without remedy. One remedy is—the shortness of the duration allowed to the power of its several members in the aggregate; a year, or two years at the utmost.

Another remedy is afforded by the speedier dislocation of any or all of those who have been seen concurring in the obnoxious measure: dislocation, namely by those by whom he or they had been located. Operose is this remedy, it is true; but were it ever so inadequate it should not be rejected; for it is the only one the nature of the case admits of: and if the facility of it were to a certain degree great, the remedy might even be worse than the disease. Little does it seem in danger of being inoperative: for, of the very first commencement of its preparation, a natural result would be—no inconsiderable uneasiness on the part of the members who were the object of it. Supposing no instance of its being applied ever to have place, no proof of its inutility would be the result.

If, to the authority of the legislature, limits are regarded as being applied, it will be in one or other of the following ways:—

1. By the authority of the supreme constitutive. If, on any occasion, in the opinion of the supreme constitutive, the legislative has by any ordinance trenched upon the authority given by this same constitution, to the supreme constitutive,—a natural consequence will be, that on the part of the members of the supreme constitutive in their separate capacity no regard will be paid to it: in which case, as power on the one part is constituted by, and is in exact proportion to, obedience on the other part, thus it is that the supposed anti-constitutional ordinance of the legislature will remain without effect. On the disposition on the part of the members of the supreme constitutive to pay obedience to the ordinances of the supreme legislative is the legislature dependent at all times for the power which it exercises: by the supposition on the individual occasion in question, this same disposition is diminished or altogether vanishes; and this being supposed, so on that same occasion will the power of the legislature.

By the judiciary, that is to say by any judge in whose judicatory a member of the supreme constitutive is prosecuted for the alleged offence committed by the supposed act of disobedience—by the judiciary it may be said the punishment thus called for may be inflicted. True, so it may be; but that it should be, is not likely, were it only for this—namely, that the judge is dislocable by a majority of the electors of the district.

True it is, that on this occasion, as on any other, it may happen, and is likely to happen, to the suffrages of the supreme constitutive authority, to be divided. But this is an inconvenience the existence of which is in the very nature of the case.

To produce the effect here endeavoured to be produced by the promptly applied dislocative power given to the supreme constitutive over the members of the legislature, it is not necessary that any application should in fact be made of it. In any case in which it appears likely that, by the proposed ordinance in question, the members of the supreme constitutive will, in any considerable number, be likely to regard it as a violation of their rights—rights naturally so valuable in their eyes, the great probability seems to be that a majority of the legislature will not hazard the enterprise: that they will not, even though no considerable apprehension of any such strong measure as that of dislocating them were entertained by them; for from a degree of unpopularity much less than would suffice for their dislocation, no inconsiderable personal inconvenience would naturally be produced.

2. By the authority of the supreme legislative itself, composed of the same members. This case is brought to view for no other reason than because, not only the possibility but the actuality of a limitation, produced by such a law, seems commonly to be assumed. But by a little reflection the impossibility of it will be made apparent. In the case of this body, as in that of every other body, and every individual, its will is as much its will at one time as at another. To suppose that its will, on the first of two days, can render of no effect its will on the second of those same two days, is a self-contradictory supposition: it supposes that on such second day its will will be, and at the same time will not be, to the effect in question.

3. By the authority of the supreme legislature itself, at a time when the members of it are in a greater or less proportion, or are all of them altogether different. For simplicity of conception, suppose them in their whole number without exception different. By the supposition, it is their desire to render of no effect the will declared by their predecessors: by what consideration should they be prevented from carrying such their desire into effect? At the anterior time in question, of the will of the then existing members, was the authority in question composed: at the posterior time in question, of the will of the then existing members it is that that same authority is composed.

Altogether the work of imagination, must be any bar by which, in preference to the will of the anterior set of functionaries, the will of

the posterior set of functionaries is regarded as prevented from taking effect. Not by any well-considered regard for the greatest happiness of the greatest number can any such scruple have been produced: nor by any well grounded supposition of superior intellectual aptitude on the part of the earlier set of functionaries. Appropriate intellectual aptitude is either appropriate knowledge or appropriate judgment. To the knowledge possessed by the anterior set, the posterior adds the whole stock of knowledge which the interval of time has brought to view: and all appropriate judgment being the fruit of appropriate knowledge, proportioned to the addition to knowledge, will of course be the addition to judgment, unless some reason can be shown why it should be otherwise. Thus then, with reference to the time of action in both cases, will the posterior set, as compared with the anterior, possess an unquestionable advantage: each of them possessing a knowledge of, and in relation to, the facts of its own time. But the time here in question is the time of the posterior set of functionaries: the time when, in pursuance of the knowledge and judgment possessed by them, an ordinance to a certain effect, in relation to a certain subject, is proposed to be framed and issued. But of none of the intervening facts—in a word, of none of the facts immediately belonging to the case, could the functionaries of the anterior time have had any knowledge, nor, therefore, be capable of forming any appropriately grounded judgment whatsoever. Can anything, therefore, be more absurd than the supposition which, with reference to the proposed ordinance in question, attributes to those same anterior functionaries, in comparison with these their successors, any superiority in the shape of appropriate intellectual aptitude?

In so far as the proposition has knowledge and judgment for its subjects, in the instance of any other branch of art and science, it is too palpably absurd to find a defender anywhere; if in the instance of the branch of art and science here in question there is a just cause of exception, it lies on him by whom the existence of such exception is asserted to prove it.

4. By the authority of the functionaries belonging to the several other departments, namely, the executive, or say the administrative, and the judiciary. Manifestly self-contradictory and absurd would be the supposition, that by either of those authorities, limits ought to be, or could be set, to the power of this. Of their institution, the declared and sole declared end and purpose is the giving execution and effect to the will formed and declared by the members of the legislative. But is it possible that by them or either of them it should be better known what is the will of the legislative than by the legislative itself?

These things considered, all endeavour to restrain the power of the supreme legislative by words of inhibition or restriction in a constitutional code, will be seen to be incongruous, and tending to lessen instead of increasing the regard paid to it by the authorities and people of succeeding times.

That the restrictive system is capable of being of use is undeniable, for that it has been of use is equally so.

Under a form of government bad in principle, it is capable of being of use: and under every such government, in so far as it has been applied, it has probably been more or less of use. If in any government it has been of use, a more conclusive proof of the badness of the government cannot be given than that such a system has been of use under it.

To this head belong the sorts of instruments called in English and thence in French, *Charters:* and also in English, *Bills of Rights.*

This sort of restrictive arrangement is of use, because the government is in principle a despotism: the end in view is not the only true end, but a false one: not the greatest happiness of the greatest number, but the greatest happiness of the ruling *one*, with or without that of a comparatively few, in the character either of his instruments or his partners.

On an occasion of this sort selection is made of some of the grossest and most palpable of the forms in which depredation and oppression are wont to show themselves; and by one mean or other, the depredator and oppressor-general has been engaged to promise, that from depredation and oppression in these particular forms, he will be graciously pleased to abstain in future. Not that to him any right to the exercise of depredation and oppression in these, any more than any other forms, is wanting; but that in these particular instances, such is his mercy and condescension, he will, in so far as he is pleased to continue in the same mood, be pleased to abstain from the exercise of them.

In every instance the probability seems to be, that the engagement, such as it is, has not been altogether without its use. Is it then, that in any instance, even in those forms in particular, the career of despotism has ever altogether ceased? No: but in every instance the probability is, that the exercise has not been either so frequent or so flagrant as, but for this engagement, it would have been.

At any rate, an intimately-connected yet distinguishable use has been the drawing the attention of the public-opinion tribunal to the several points in question; and by means of the exercise thus given to it, thus giving strength to it.

In proportion as it gives strength to the public-opinion tribunal—that is to the members of it, the great body of the people—it gives weakness to the government: and where such is the principle and character of the government, everything that adds to its weakness is of use, and the price given for any such addition cannot easily be too great. For in exact proportion as the rulers have grown weaker and weaker, the people have been

growing stronger and stronger, insomuch that, where the ruler has been carrying on the business of government for his own benefit, the people are ready to step into it, and carry it on for their own benefit.

Objection: If as towards the executive and the judicial, omnicompetence on the part of the legislative has place, all these authorities will be united in the hands of the legislative, and in that case, according to Montesquieu's definition, the government will be a despotism. The division of power, meaning between these three several authorities, is generally acknowledged as the best security, and as an indispensable security, against despotism.

Answer: This definition being destitute of all reference to the greatest happiness of the greatest number, the authority of Montesquieu has no title to regard. He threw into the field of legislation a few unconnected lights, but he had no clear conception of any one spot in it. His fundamental division of the principle of a government,—fear, honour, and virtue, has been for these sixty years shown to be mere nonsense. But for the reference made to this aphorism of his, in the debates relative to the United States Constitution, and incidentally in discussions relative to the English government, his book would not on this occasion, any more than on any other, at this time of day, have any claim to notice. Vain would be the pursuit to keep hunting for a distinct meaning in a work in which no such thing is to be found. Of happiness, he says nothing: instead of security for the people against their rulers, he talks of liberty: and assumes without directly saying so, that to establish the most perfect liberty is the proper object of all government: whereas government cannot operate but at the expense of liberty, and then and there only is liberty perfect, where no government has place.

The work which contains by far the greatest quantity of sound reasoning and useful instruction on the subject of government, is an American work called *The Federalist*. But even there, the passages in which there is a want of clearness in the ideas attached to the words and phrases employed, are but too frequent, and the work being in the form of letters, the reasoning is desultory and unmethodical.

At the end of fifty pages and not before, comes a phrase, the business of which is to lay down a definition of the end of government. "Justice is the end of government." Then immediately after. "It is the end of civil society." But justice, what is it that we are to understand by justice: and why not happiness but justice? What happiness is, every man knows, because, what pleasure is, every man knows, and what pain is, every man knows. But what justice is,—this is what on every occasion is the subject-matter of dispute. Be the meaning of the word justice what it will, what regard is it entitled to otherwise than as a means of happiness. By justice, did the writer mean equality? Instead of justice, he should then have said equality. But of the four subordinate ends of government, equality is but one, and of that, the importance is neither so great nor so clearly visible as the three others, or, at any rate, as two of the three, namely, subsistence and security.

For the happiness of the people, every security that can be given is reducible to this one —the supremacy, or say the sovereignty, of the people: the sovereignty of the people, not nominal merely, but effective, and brought into action, or rather *capable* of being brought into action, as frequently as the exigency of the case requires, and the nature of the case renders possible.

Altogether inadequate,—and, with reference to the only justifiable and proper end of government, unconducive,—is the sort of arrangement expressed by the phrases *division of power* and *balance of power*.

The phrase—balance of power, supposes division of power, and expresses a modification of it: it means that the shares which are the result of the division should be equal, or as near to equality as possible. To say of the power in question, that there should be a division of it, is simply to say of it, that it should be divided into shares. To speak of the balance of power, as a thing that ought to be maintained in a state, is to say that these shares should be all of them equal to one another: for in a pair of scales, with equal arms, either the weights in the two scales are equal, or, what is called a balance between them has no place: one of them falls, the other rises.

By those by whom the phrase—*division of power*, is employed, of the subject-matter of the proposed division, no precise determination is given. Is it the aggregate mass of power exercised by all the functionaries of the state, of all grades put together? or is it no more than the whole mass of the power exercised by those who occupy the highest grade in the several departments?

But in no sense, unless and in so far as depredation and oppression in other shapes are excluded by it, can division of power be of any use. Because, into whatsoever portions, separation of the power, and corresponding interest, may have been made, corruption may unite them, and cause them to co-operate in the work of depredation and oppression: and not only *may* unite them, but to a certainty *will*, unless for the prevention of these evils, arrangements of a very different nature be made.

Thus it is in England: thus it is and ever will be in all mixed governments, into the mixture of which an alleged representation of the people is admitted. In fact, no such separation of power, as is pretended to have place, has place: nor if it had place, would it be of any use. By keeping the three powers separate and independent,—namely, the legislative, the executive and the judicial, the use of the executive and of the judicial would be taken away, namely, the giving execution and effect

to the ordinances issued by the legislative. To government, anarchy would be substituted, if in case of disobedience on the part of those subordinate functionaries, the legislature had it not in its power to dislocate them, and substitute to them others, by whom the services they were designed and expected to render, would be performed.

But although the subordinates ought not in any case to take upon themselves the functions of the legislative, there are cases in which the legislative may and should take upon itself the functions as well of the executive as of the judicial: for there are cases in which, were it not to do so, its own authority would be without execution and effect—it would itself be without efficiency or use.

Of these cases there are two: 1. Where the will of the functionaries in the subordinate department opposes itself to the will of the functionaries in the superordinate department: 2. Where the exigency of the case, in respect of time or appositeness of appropriate information, will not admit of its operating by the intervention of the agency of these same subordinates.

To the executive it belongs, suppose, as by the here proposed constitution it does, to command in chief the military force of the state; and where he does not command it in person, he locates him who shall command it. To the executive chief, and not to the legislature: good in all ordinary cases. But suppose the executive chief, or such his deputy, possessed as he thinks of the affections of the military, and setting up for the sovereignty. The legislature must dislocate him, or either civil war, or, instead of representative democracy, despotic monarchy ensues.

So in the case of the judiciary. If in any district the judge wilfully forbears to give execution and effect to the declared will of the legislature, and to such wilful forbearance a certain degree of continuance is given, the power of the legislature in that same district is at an end: and thus, by the waywardness of a single functionary, the will of the whole people, as signified by their agents chosen by them for that purpose, may in so far be frustrated. To remedy this, what is there that will suffice? This, and nothing less—decree of the legislature dislocating the insubordinate judge; and in the event of his continuing in the exercise of his functions, notwithstanding, arrestation and confinement of his person.

That except in the two cases above pointed out, this sort of arrangement ought not to be employed, may without difficulty be admitted: and except in these cases, the employment of it is here accordingly disrecommended.

Without any such limitation it has by every government been, without any scruple, employed.

For the forming a sufficiently instructive ground for its proceedings, the legislature, be the subject-matter what it may, calls for information at the hands of every person whom it regards as competent to the furnishing it: and if the individual be refractory, declining to present himself, or declining to answer questions, it consigns him to confinement till his wayward pertinacity gives way to the sense of political duty, and due obedience takes its place. Here is one of those functions exercised, in the exercise of which the judicial authority is continually employing itself, and of which, for giving execution and effect to the law, it has such perfect need.

It is done, moreover, not only by the whole legislature, by a bill of attainder, but with much less of formality and discussion. It is done by every branch, how small soever, which, under the name of a committee, is detached from itself for this purpose.

Section VII.

Inaugural Declaration—why?

For what reasons employ this declaration? The reasons will appear in the following uses:

Use 1. To appropriate moral aptitude, it contributes in the several ways following:

As a security for aptitude in that shape, it brings to bear upon the conduct of the functionary, throughout the field of his authority, the force of the popular or moral sanction, as applied by the public-opinion tribunal: it being among the characteristics of this unofficial judicatory, to act—and without injustice or mischief in any shape, upon evidence, of a sort upon which no proceeding could, without palpable injustice, be grounded in any official judicatory.

Many are the cases in which, but for the sort of check thus applied, misdeeds of the most mischievous nature would be practised in full security. Among them is corruption on the part of a public functionary, in those cases in which it would not be exposed to punishment—punishment such as that denounced by penal law. For instance, where by the corruptor, or some connexion of his, the service is rendered—not to the functionary himself, but to some connexion of his, in whose prosperity he has an interest more or less considerable.

Of a tie of this sort, the efficiency will be in proportion to the degree of particularity which can be given to the wording of it. If the wording of it be to a certain degree general and loose, so far from being conducive, it is in a high degree adverse to the end which it professes to have in view. The effect of it is to cause the unthinking multitude to regard as if bound by a most efficient tie, a functionary on whom neither the tie in question, nor any other tie of the sort, ever exercises any the smallest restraining influence. It has the effect of a certificate of public probity, where the quality itself is ever so completely wanting.

England may on this head afford a useful example to all other nations. What may be called the system of oaths, is one of the most

extensively employed, and most efficient instruments, in which a government depending as that does, upon corruption and delusion for its existence, finds its support. Scarce an office of any importance, on his entrance into which, the functionary does not pronounce the words of an engagement, to which, in order that the influence of religion may be enlisted in the service of corruption, the term *oath* is employed. Of the use thus made of this instrument, delusion and corruption are the continually associated effects.*

2. A use of secondary importance, is the security it affords the functionary against the uneasiness producible by solicitation, on the part of this or that person, with whom it happens to him to stand connected, whether by the ties of self-regarding interest, or by the ties of sympathy. In this way, but for a safeguard of this kind, he may be annoyed by tormentors in any number, and even on two opposite sides at once. On the other hand, let the law give him this safeguard, under the semblance of coercion, it gives him real liberty: and thus it is, that in the breast of a public man, shelter may be afforded to probity, against the tyranny of private sinister influence.

This use of the declaration, or engagement, is of no light importance. Self is but one: connexions are infinite. The danger which the probity of a public man is exposed to, from the suggestions of his own immediate interest, is trifling in comparison with the attacks it has to sustain from the interest of all sorts which surround him. Amongst these, local and professional interests are particularly dangerous. Individual ones venture not beyond a whisper: the others, by their clamour counterfeit the public voice, and clothe themselves impudently in the garb of virtue. Strengthened by secret inclination, and entrenched behind the rampart of a solemn engagement, probity may bid defiance to all its adversaries.

3. While thus subservient to the main point, namely, appropriate moral aptitude, the instrument may be found not altogether useless, with reference to appropriate intellectual aptitude. It will serve in some sort as a guide over the field of government. In this character, that part of the code, in which an indication is given of the subjects which respectively belong to the field of duty, of the several ministers belonging to the administrative branch of the executive department, together with the engagements of the various functionaries, to perform their duty,—may serve as a supplement.

Of all the several offices which belong to the official establishment, the two in regard to which, it affords the most considerable promise of being of use, are the legislative and the judicial.

In the case of the people at large, in their quality of members of the supreme constitutive authority, no engagement of this sort seems to afford much promise of being of use. In the character of a curb, it would be altogether useless: having no sinister interest,—the universal interest being but the aggregate of their several particular interests, it would in their instance be needless: acting as they are supposed to do on a system of perfect liberty, with perfect secrecy for its security, it would in their case, needless or needful, be inapplicable.

In the character of instruments of appropriate intellectual aptitude—instruments for the conveyance of appropriate knowledge, and for the guidance of appropriate judgment, the two declarations, allotted to the situation of legislator, and that of judge, will serve at the same time, for their constitutional supervisors and masters,—the members of the supreme constitutive.

SECTION VIII.

Sittings unintermitted.

Why at the hands of these public functionaries, exact an attendance thus unintermitted?

Because to the amount of irremediable mischief, which may at any time be the result of non-attendance, there are no assignable limits. Of the evil which actually has place in the several governments, there is no saying how large a proportion may have been produced by the want of it. In the situation in question, to an excess of business, or in short to any cause but the true one, may in the instance of each such functionary, have been at all times attributed, that which in truth had for its sole cause, his indolence or negligence.

The more completely the time of a man, thus placed in the very thickest of moral contagion, is occupied in the discharge of his duty, the less is the time during which he stands exposed to the solicitations of corruptive influence: to visits from persons of all classes, whose interest and consequently whose endeavour, will be to ply him with temptation, in all its shapes, for the purpose of engaging him to concur with them in the sacrifice of the public to their own particular interest.

Whatever be the occupation, good or evil, among its purposes is, the putting an exclusion upon all incompatible ones.

"John," said a careful housewife to her servant, when she sent him into the cellar, "keep whistling all the while you are drawing the ale." Drinking and whistling cannot go on at the same time.

Objection 1. No man of worth will submit to restrictions so irksome and so degrading.

Answer. To render the objection relevant, put aside all such vague phrases as men of worth, and employ instead the only relevant

* See the tract called "Swear not at all," in vol. v. p. 187; and see in the Rationale of Evidence, vol. vi. p. 309 *et seq.*—*Ed.*

phrase—no man endowed with adequate appropriate aptitude, in all its several branches.

This done, the true answer is—no man endowed with adequate appropriate aptitude will decline submitting to these same restrictions, or regard them as being in any degree degrading, or, in comparison with other occupations, so much as irksome. A man's doing so, would be conclusive proof of want of aptitude.

The occupation of the medical practitioner consists in the removing, or endeavouring to remove or exclude, evil,—in thus doing good upon an individual scale. The occupation of the legislative functionary consists in the excluding, or endeavouring to exclude, evil,—and thus, in doing good upon a national scale. The legislative functionary shall, it is proposed, have one day of repose and relaxation out of every seven. On no one day of the three hundred and sixty-five can the medical practitioner be assured of so much as a single hour of repose and relaxation. To the occupation of the medical practitioner, no power, in any shape, is attached. To the occupation of the legislative functionary, power, the highest in the scale of operative power, is attached.

For the occupation of the medical practitioner, never is there any want of candidates: still less for the occupation of the legislative functionary, would there be any want of candidates.

In the offices belonging to the various departments of the executive, in the case of no individual in the order of clerks would this same degree of assiduity in attendance be regarded as excessive. For no one of these situations is there ever any want of candidates. That which a man would not decline doing for a less sum without power, he would not decline doing for a larger sum, and with the highest power.

Objection 2. Any such degree of strictness is, in any such high situations, altogether without a precedent.

Answer. Nothing can be more natural than that it should be. Its being so may, at any rate, for the purpose of the argument, be admitted without difficulty.

In the case of the medical practitioner, the degree of closeness of attendance is determined on the part of the functionary, partly by the nature of the case, partly by the patient: in the case of the legislative functionary, it is determined by himself, in conjunction with others, in the instance of every one of whom the same sinister interest has place, with the same power of fulfilling its dictates. It is determined by a set of men who feel themselves completely at liberty to sacrifice the aggregate interest of all their fellow countrymen to any the smallest portion of personal and self-regarding interest, and who are in the constant habit of making this sacrifice.

In the case of the medical practitioner, if any evil results from the want of adequate promptitude, in such sort that the patient suffers, the functionary by whose fault it is produced, suffers along with him; for he cannot avoid doing so. In the case of the legislative functionary, whatsoever evil befalls the patient—perhaps the whole population of the country, the patient suffers alone: the person in whose misconduct the evil has its cause does not suffer along with him, for it has been in his power to exempt himself from all suffering, and so accordingly he has done.

What is the situation in which the efficiency of this bar to a seat in the legislature would be felt in its highest force? It is that situation which is composed of power, without obligation. It is that, for example, of a member of the English parliament. Take either house: of the majority, all ill-disposed; of the minority, some well-disposed. On the part of the well-disposed, in the scale of duties, first comes amusement in all its shapes, then serving the particular interests of self and connexions, lastly, ministering to the public interest. On many occasions, there have not been a sufficient number of members present in the House of Commons, namely, forty, when the fate of a proposed law was to be decided, which had for its object to provide a remedy to an immense mass of misery, under which the people were suffering.*

If, when a man says, "no man of worth would accept of the situation on such terms," what he means is,—"neither I myself, nor any who have a place in my esteem, would," and this man belongs to either of those bodies, he delivers an aphorism which assuredly has more or less truth in it. From the society in which he has been bred, all sense of positive obligation has stood excluded. Negative obligation, yes: of that, he has all along had the sense: by the fear of being annoyed in return, he has felt himself bound not to annoy others. But as to the doing anything he does not like, for individuals, or even for himself, it is a thing unusual to him, and, for the public at large, unprecedented.

But from an exclusion put upon such men of worth, would the public interest, in any shape, be a sufferer? No: in every shape it would be a gainer. By habitual opulence, men with scarcely one exception out of a thousand, are rendered irremediably unapt for legislative business: unapt in respect of every element of appropriate aptitude.

This objection, supposing it regarded as peremptory and conclusive in this instance, would be so in the instance of every measure, almost without exception, that had for its object the augmentation of the happiness of the greatest number.

Perfect is the accordance between this arrangement for constancy of attendance, and the

* On one occasion the House of Commons was obliged to adjourn on account of the members being absent, for the purpose of witnessing the performance of a celebrated female opera-dancer.—*Ed.*

anterior one for the shortness of continuance in office, so far as regards the members of the supreme legislative. The shorter the time of a man's confinement, the less irksome to him will it be.

CHAPTER XVII.

SUPREME OPERATIVE.

SECTION I.

Appointment in the People.

In a political state, all power is either *operative* or *constitutive:* operative is that, by the immediate exercise of which, obsequiousness and obedience are called for at the hands of individuals: constitutive, as we have seen, is that by the exercise of which, operative power is created and conferred.

In every form of government in which the possessors of the supreme operative power have not the great body of the people for their constituents, the situation of every possessor of a share in the supreme operative power is that of an enemy of the people.

In an absolute monarchy, the situation of the monarch is at all times that of an enemy to the people.

In a limited monarchy, limited by representatives of the people, spurious or genuine, the situation of the monarch is at all times that of an enemy to the people.

In a limited monarchy, limited by a representation of the people, spurious or genuine, the tituation of a representative of the people is that of an enemy to the people.

In a limited monarchy, limited by two bodies, one composed of the representatives of the people, spurious or genuine, the other of a set of men succeeding to one another upon the principle of genealogical succession, (rendered thereby a perpetually existing aristocratical body,) the situation of every member of that body is at all times that of an enemy to the people.

A people governed in any one of all these ways, is a people governed by its enemies.

In comparison with that of a people governed by its own delegates, the condition of a people governed in any of those ways, will of necessity be at all times an infelicitous one.

Willingly to contribute to the support of, or even to submit to, a government constituted in any of these ways, so long as any better is in prospect, in conjunction with a probability of its accomplishment,—is willingly to act in the character of an enemy to the people.

In no instance, at no time, has any attempt been made to show that by the substitution, or by the addition made of the office of monarch, to the office of member of a body of delegates chosen by the great body of the people, any addition has been made, or can be made, to the greatest happiness of the greatest number. In no instance can any such attempt have ever been taken into consideration, but the impossibility of success must have manifested itself.

Be the community what it may, to every member of it belongs two opposite and continually conflicting interests: 1. His share in the universal interest—that interest which is common to himself and every other member of the community: 2. That interest which is particular and peculiar to himself, with or without some comparatively small number of associates.

In the ordinary state of things, of a man's particular interest, the value will generally, in his eyes at least, be greater than the value of his share in the universal interest: only in times of extraordinary public danger will the value of his social interest have the ascendant in his breast: hence, in so far as between the two interests a competition has place, the social will yield, and be made a sacrifice to the self-regarding interest.

Proportioned to the magnitude of his power will be the facility with which a ruler will be enabled to make sacrifice of the less influential, the social, to the more influential and predominant interest.

The universal interest requires, that in regard to subsistence, abundance, security, and equality, the aggregate mass in the community in question, be maximized: and that in particular the shares, which are the result of the three first, be as near to equality as consistently with security in all other shapes they can be: and that against rulers in particular, in quality of persons exposed to the temptation of acting as internal enemies to all the rest, the security against such their enterprises should at all times be at a maximum. On the other hand, that which their particular interest as above requires is—that of the aggregate of abundance, their own particular share be at all times a maximum. Of the fulfilment of this end and object of pursuit, an example may be seen in the case of the quantity of the matter of subsistence and abundance sufficient for the subsistence of from 10,000 to 100,000 productive hands, extorted from the community and placed in the hands of a single individual in the situation of monarch, and the utter inability of those whose security is thus destroyed, ever to obtain redress.

To the objects of general desire and pursuit, rulers in virtue of their situation are enabled to add three others; namely, under the names of honours and dignities, a sort of factitious reputation of their own creation, and altogether independent of good desert: dignity and honours at the expense of the unhonoured; vengeance, at the expense of those at whose hands their will experiences resistance, or their conduct disapprobation; and in so far as compatible with the pursuit of those other objects, and of pleasure in all other shapes, ease at the expense of official duty.

Of official aptitude, the several branches have been brought to view. Of the sinister interest just mentioned, one effect is the diminution, if not the destruction, of the appropriate aptitude in all those several branches. The universal interest requires that it be a maximum: this sinister interest, that it be a minimum.

As to appropriate moral aptitude. In regard to this branch, the universal tendency, and almost everywhere the universal effect, of the sinister interest in question, is to prove the utter destruction. By appropriate moral aptitude is meant the disposition to contribute to the utmost to the universal interest, in spite and to the sacrifice of all particular and opposing interests: but in the situation in question, to the desire is added the power, of sacrificing to the particular interest, on every occasion on which a competition has place, the universal interest.

In regard to money and money's worth, matter of subsistence and abundance, minimize says universal interest, the quantity lying at each functionary's disposal: and proportioned to the degree of power attached to his situation, is the degree in which, in the instance of each functionary, the production of this effect should be aimed at.

So as to reward. Extra reward, give none, says universal interest, without proof of correspondent extra service: proof no less strict than that which is, or ought to be given, of delinquency, with a view to punishment. Give it, says ruler's interest, without pinch and without need of proof of extra service: still better, if without need of so much as an allegation, even in the most general terms, of extra service in any shape ever rendered.

As to appropriate intellectual and active aptitude, establish throughout the whole field of office the most instructive preliminary and publicly-applied tests and securities, says universal interest. Establish no such tests, says sinister interest. The effect of any such tests would be to exclude a large proportion of rulers from office, and to impose on the rest obligations, by the burthen of which the value of the situation would be diminished.

Maximize the efficiency and extent of the application given to each such test, says universal interest. If tests there must be, or where they exist already, minimize their efficiency, says sinister interest.

Minimize the sum of the pecuniary inducements for acceptance of the several offices, says universal interest. For the aptitude on the part of the individual being established as above, the less the sum of those extraneous inducements, the greater the degree of relish for the situation, as proved by the acceptance. Maximize the pecuniary inducements, says sinister interest.

In a word, of every ruling functionary, the natural and self-regarding particular interest is adverse to the national or universal interest. Of this sinister interest, the constant tendency is to diminish, not to say to minimize, his appropriate moral aptitude. By it he is continually urged to give the reins to anti-social and anti-national appetite, in all its shapes. By it he is urged to maximize, at the expense of the universal interest, the quantity, at his disposal, of the several external instruments of felicity, objects of general desire, sweets of rule, incentives to misrule: of public money for his own use, of power for the purchase of obsequiousness to his own will, and of service in all its shapes for his own benefit: of factitious honour and dignity for the purchase of respect to himself from all men, and obsequiousness, from all who look to receive it, at his hands: of vengeance at the expense of all who resist his will: of ease at the expense of his official duty.

Such are the national evils, to the maximization of which every functionary is constantly urged by the pressure of his own self-regarding particular and sinister interest: while the interest of the greatest number at all times requires that in every instance these same evils be minimized.

Section II.

Monarchy—what?

Why not give to the state chief, possessor of the supreme executive power under the supreme legislative, the supreme legislative power, thus placing the whole operative power of the country in that one hand? Because in that case the inaptitude opposite to appropriate aptitude in all its several branches is at its maximum.

The inaptitude opposite to appropriate moral aptitude is in this state of things at its maximum. In pursuance of the self-preference inherent in human nature, the end of his government will be the greatest possible happiness of his individual self. This object, according to whatever happens to be his notion of it, he will pursue without regard to the happiness of the greatest number, at the expense of that happiness, and to the sacrifice of that happiness. His sinister interest having no right and proper interest to serve as a check to it, the force of his power having no counterforce to keep the action of it in a state of uniformity to the public interest, his desire to make on all occasions the sinister sacrifice, finding no power in a condition to oppose it, will on every occasion find ample means for the gratification of it, and the sacrifice will at all times under his government be consummated.

He will accumulate under his own grasp all the external instruments of felicity, all the objects of general desire, in the greatest quantity possible: all at the expense of, and by the sacrifice of, the felicity of the other members of the community.

All around him being below him, dependent all of them on his pleasure for whatsoever por-

tion of felicity they are suffered to enjoy, he finds in none of them any desire to oppose his will in any of the above particulars: in all of them the disposition and the endeavour to give accomplishment to it. He finds them joining one and all in the assurance that his greatest happiness is the only right and proper end of government: that if the happiness of any other individual is a fit object of regard to him or any one else, it is only in so far as the happiness of the individual servant may chance to be an object of regard and sympathy to the universal master.

In the eyes of this one member of the community all the others will be objects of regard on the same footing as working cattle are in the eyes of the proprietor. On the part of an ill-tempered monarch, the treatment experienced by them will be that sort of treatment which is experienced by cattle at the hands of an ill-tempered master. The best that can happen to them at the hands of the best tempered monarch, is to be treated upon as good a footing as cattle are treated upon by a good-tempered master.

But at the hands of the best tempered monarch they never will in any instance be treated upon as good a footing as, in the hands of a good-tempered master, it is common for his cattle (say, for example, his horses) to be treated. His horses will be continually in his presence: in the event of their being ill-treated by the negligence or malice of a servant, the ill-treatment they have suffered will generally manifest itself by visible signs, and by the appearance of their suffering, the sympathy of the master will be called into action. Knowing that the quantity of service he can obtain from them, without prejudice to their appearance, is limited, and that so sure as he endeavours to obtain any more, their appearance and their value will, in his eyes, be deteriorated, he will not work them to excess. No determined and permanent resistance to his will being ever opposed by them, and the inferiority of their minds to his being manifest, they will on no occasion be the objects of his ill-will or of his anger: among trained horses there is no such thing as a determinately and constantly rebellious horse.

On not near so good a footing are subjects in the eyes and hands of the best tempered monarch. Of the whole number of them, no more than a very small part at the utmost are ever under his eye: those who are worst treated, those whose sufferings are greatest, from the treatment they receive under his government, are never, especially while enduring that treatment under his eye. Among them there will always be a large portion by which his ill-will and anger will continually be called forth. By every obstruction afforded by any one of them to the fulfilment of his will, his anger will be called forth: and such obstructions howsoever kept under by fear and hope, must notwithstanding be universal and continual.

Whatsoever quantity of the external instruments of felicity he happens at any time to have in his hands, or at his immediate command, he is never satisfied with it. He never can be satisfied with it so long as he sees around him any other of those instruments that are not equally at his command. In *his* desires are included those of all the persons attached to his immediate service, and of those desires there are not any that are or ever can be completely satisfied.

Seeing that his gain in happiness never can have place but by means of loss to them, and that of every such gain loss to them to a prodigiously greater amount is a never-failing accompaniment, what he cannot entirely avoid the perception of is—that of the suffering thus produced by him, ill-will to an amount more or less considerable in the instance of every such sufferer, is liable to be the consequence. Among them in a large, though not exactly determinate, proportion, he beholds so many enemies: by the contemplation of enmity on their part, enmity on his part is produced. For the gratification of this enmity, as well as for keeping down resistance, and securing against non-payment the continually increasing quantity of the instruments of felicity exacted by him at their expense, the afflictiveness of the penal law is continually screwed up to the highest amount that is thought to be consistent with their efficiency. Thus it is that in the very best tempered monarch, by far the greatest number of the rest of the community have an enemy, and that enemy an essentially implacable one. If, under such a monarch, such is there condition, what must it be under an ordinary one?

As in their own monarch all subjects have an enemy, so have they in every other.

Monarchs, it may be said, are apt to go to war with each other: and when with any two monarchs this happens to be the case, the subjects of each should in that monarch who is the enemy of their monarch, (that is, of their natural enemy,) have a friend. But in practice this is not the case. The war which one monarch carries on with another monarch is a war of rivalry, but it is not a war of enmity: every monarch is to every other monarch an object of respect: and where there is respect on both sides, no rooted, no decided enmity can be said to have place on either side. Between monarch and monarch, war is, upon the largest scale, that which between professed pugilist and professed pugilist, is upon the smallest scale. By one another monarchs are styled brothers, and on that one occasion they are sincere; for they have a common interest, and that interest is paramount to every other interest. Many a monarch has given up to a brother monarch, and freely too, dominions which he might have kept if he had pleased. No monarch ever gave up freely to his own subjects an atom of power which in his eyes could be retained with safety. War is a game

—a game of backgammon. Between two players at the game of war, there is no more enmity than between two players at backgammon. In the breasts of the players at war there is no more feeling for the men of flesh and bone, than during the game at backgammon there is on the part of the men of wood for one another or themselves. While to one another all monarchs are objects of sympathy, to all monarchs all subjects are objects of antipathy; of a sort of compound sentiment, made up of fear, hatred, and contempt; something like that which women and children are apt to feel for a toad. In the breasts of all monarchs there accordingly exists at all times a natural alliance, defensive and offensive, against all subjects.

As between injurer and injured, the man on whose part antipathy towards the other is most apt to arise, is he by whom the injury has been sustained: the one on whose part it arises with greatest difficulty, if ever it arises at all, is he by whom the injury has been inflicted.

Betwixt every monarch and every other there exists a powerful cause of sympathy. In the instance of all of them, on the same set of principles, is grounded that obedience by which their power is constituted, and in proportion to which it has place: disposition the effect of habit: habit the effect of force, fear, corruption, delusion, sinister interest, interest-begotten and authority-begotten prejudice. By every other throne he sees shaking, if the shock be from without, he feels the shock communicated to his own.

Not merely in the exercise of his political power—not merely in the public part of his life, but in the private part of his life, the natural tendency, not to say the constant effect, of the monarch's situation is to place him, not at the top, but at the bottom of the scale of moral worth, and this whether the influence of the self-regarding principle, or that of the social principle, namely sympathy, be considered. By the self-regarding principle, the more urgent the need a man feels himself to have of the kindness and good will of others, the more strenuous and steady will be his exertion for the obtaining it: the less the need, the less strenuous. The kindness and good will, and thence on occasion the good offices, the services of others, are, (where and in so far as power of remuneration is wanting,) no otherwise to be obtained than by demonstration of the like kindness, in effect and in endeavour, on the man's own part towards them. The stronger a man's need of the effective benevolence of others, the stronger the inducement he has for the manifesting effective benevolence as towards them—an inducement which, in this way, self-regarding prudence suffices to afford; the less the need, the less strong the inducement. But the monarch is of all men the man who, by a vast amount, has least need of kindness and free good will, and good offices, and services at the hands of others—of the fruits of effective benevolence unmixed with those of self-regarding prudence: for whatsoever good things in other situations men are indebted for to effective benevolence, it is in his power to command partly by punitive power, partly by remuneration.

So, the more extensively a man feels himself exposed to ill-treatment at the hands of others, the stronger is the inducement he has to bestow upon them good treatment, for the purpose of averting from him the effects of such their ill-will: the less extensive the exposure, the less the inducement. But the monarch is of all men the one who stands the least extensively exposed to ill-treatment at the hands of others: he is in a more especial degree guarded against it by the punitive branch of his power, and again by the remunerative, by which he can obtain the good offices and support of others, and without need of kindness on their parts.

Of these circumstances belonging to his condition the result has been already stated. To place, not according to the vulgar mode of designation, at the top, but at the lowest point in the scale of moral worth, him, whose place in the scale of power is at the summit.

If the current mode of estimation is in so strange a degree erroneous, where shall the cause of the error be looked for? The reason may be given in two words—*corruption* and *delusion*.

Thus it is that to every practical purpose, in the situation of monarch, inaptitude in that branch which stands opposed to appropriate moral aptitude should in all places and all times be regarded as consummate. Be the man who he may, that thing whatever it be, by the contemplation of which no uneasiness is produced in his mind, that thing it is not possible he should have any desire to remove. Be the sufferers among his subjects ever so numerous—be their sufferings ever so intense, ever so long protracted, seen or unseen—no uneasiness capable of procuring a relaxation of those same sufferings can ever find entrance into a breast so situated. Why? Because experience being altogether wanting, no conception of those same sufferings can ever have had place in any such high-seated breast. In a word, to sympathy of *affection*, correspondent sympathy of *conception*, *is indispensable*.

Next as to intellectual aptitude: The inaptitude opposed to appropriate intellectual aptitude, is also in this case at the maximum. In respect of moral aptitude, the condition of the monarch, as such, being that which has been described, the consequence is, that towards the greatest happiness of the greatest number, all that in the situation in question could be done by intellectual aptitude, if raised to its maximum, would be the preserving that same greatest number from such unhappiness as should, in the eyes of the monarch, not be contributory to his own felicity. But by the care taken of his own felicity, at the expense

of theirs, their infelicity, on his part, may be raised to a height to which no limit can be assignable.*

But in comparison with other men, who have had the advantages of what is called a liberal education, intellectual aptitude is in the situation of monarch, by unchangeable causes placed at the lowest pitch.

Of the two branches of intellectual aptitude, appropriate knowledge is that in respect of which the deficiency is less considerable, and less uniformly exemplified. In the situation of monarch, as in every other situation, man is necessarily for a length of time, more or less considerable, placed, by the infirmity attached to immaturity of age, in a state of subjection. During his continuance in that state, not only knowledge at large, but knowledge in some sort and degree appropriate, is injected into the infirm and unresisting mind. Knowledge—but of what sort? The answer is,—no matter of what sort. In respect of moral aptitude, the condition and situation of the royal pupil being what it is, any infirmity in his mind, even supposing it ever so perfect, can scarcely be matter of regret: the knowledge, supposing him to have any, or the judgment, could not in that situation be applied to any other purpose than the giving extent and promptitude to the sinister sacrifice.

It being thus certain, that with a receptacle so situated, no sort of matter contributory to the greatest happiness of the greatest number, could keep its place, even if injected, (which is what it never would be,) it may therefore accordingly be stated as a matter not worth thinking about, with what rubbish the receptacle may happen to be filled. As no considerable good could be produced by any such injection, so neither could evil. Take, for example, information concerning the most apt means for promoting the only interest which can be the object of regard—means for giving the maximum of extent and promptitude to the sinister sacrifice. A scheme of instruction by which all such pernicious knowledge would be excluded, would it not be preferable, it may be asked, to a scheme in which it were comprised? The answer is,—No. For in this way, the supply afforded by others, the supply afforded by the minister, whoever he happens to be, who holds the seals of office while the royal pupil holds the sceptre—this supply will at all times be perfect.

To the situation of monarch it belongs to find *will*: to the situation of minister it belongs to find knowledge, to find judgment, and, if need be, to find invention, such as on each occasion shall be necessary and sufficient to give effect to that will. But to do so requires a degree of exertion of mental labour much beyond the greatest quantity which, in the situation of monarch, it is consistent with human nature to bestow: this being admitted, it follows, that from no stock of appropriate knowledge which, in the situation of monarch, the mind of man is capable of finding room for, can the mass which will be applied to the business of government receive increase.

One thing, of which the non-injection is matter of certainty, is soon stated: this is the axiom by which the greatest happiness of the greatest number is stated as the only justifiable end of government. That no such position could by any preceptor be placed before the royal pupil in the character of a true one, is sufficiently evident; for in this position is included, among others, this, namely, that no such office as that which he is destined to fill, ought to have place in any community, and that the only good act which is capable of being done by any one who is invested with it, is to suppress it, to abolish the system of government of which it forms a part, and substitute a representative democracy. Various are the inducements, it need scarce be observed, any one of which would abundantly suffice to produce this negative effect: to the community the advice would be unavailing, for in no case would the pupil follow it; to the pupil it would be unpleasant; to the prospects of the preceptor ruinous.

The only right and proper end of your government is your own greatest happiness. Suppose this commodious axiom substituted for the other incommodious one, the two latter inconveniences are avoided, while to the interest of the community at large no damage is done, since by any advice to the opposite effect, the minutes employed in giving expression to it would be so much time thrown away.

So necessarily and so intensely afflictive is the treatment which, through system and cool reflection, the results of sound judgment, subjects are almost sure to receive at the hands of the most intelligent monarch, that any ulterior suffering they may stand exposed to, from mental derangement in the same quarter, it may be thought scarce worth adding to the account. But by the extraordinary proportion of the individuals known to have laboured under malady in this shape, some clue may be afforded towards a right conception of the character of the class, and the effect produced on the mind by power in excess.

In this extraordinary case, if the mischief to which the community is exposed is not so great as in the ordinary one, the absurdity of submitting to it is more flagrant, and the depravity, moral and intellectual taken together, manifested on the part of a nation which submits to it, at the same time but too incontestably demonstrated. In every monarchical state, the great probability always is, that, in the proportion of several to one, at any given

* Take for example the case of Frederick the Great, king of Prussia. See what was the state of the people under his government, as depicted by Sir Charles Hanbury Williams, diplomatic resident of England at his court, in the appendix to the Earl of Orford's Memoirs, London, 1822.

period the fate of all its members will be in the hands of a madman.

Look, now, to the electors of a President of the Anglo-American United States. Of their placing a madman in the situation of chief functionary, from this moment to the end of time, by what numbers shall the degree of probability be represented?

The curious circumstance is, that down to the moment when the condition of the sufferer is too manifest to be any longer concealed from the public eye, the features of superhuman excellence, in all its shapes in general, and that of consummate wisdom in particular, will still be his, by the unanimous testimony of all who hope for any good thing, or fear for any evil thing at his hands: by the unanimous voice of all corruptionists and hypocrites, echoed by the unanimous chorus of their dupes. In him the priests will continue to behold the most religious, the lawyers the most just, the diplomatists the wisest, the courtiers the most gracious,—all these in chorus, together with the hireling writers, will proclaim him in one word the best of monarchs, present, past, or future.

Every monarch is a slave-holder upon the largest scale, and in that relation, each correlative is corrupted by the relation he bears to the other. Under a monarchy the population is composed of the insulters and the insulted; of the corrupters and the corrupted; of the deluders and the deluded; of bullies and cowards; of hypocrites and dupes.

When once the human race is rid of the two congenial plagues, monarchy and slave-holding, with how contemptuous a sympathy will not the present generation be regarded by all succeeding ones?

If where the monarch is a madman, the people are not worse afflicted than they are seen to be, it is because the operations of government, are directed, not by the determinations of the madman himself, but by those of a knot of courtiers in his name, whom accident has thrown in his way, in such sort as to have become chosen by him to be made the instruments of his will in the several departments: or rather, and what is more simple, some *one* of them who has had the good fortune to persuade him that by the choice of that one instrument his desires are likely to receive a more extensive gratification, than by the choice of any other individual: which individual is then prime minister, exercising the powers of the monarch and easing him of the whole detail of the cares of government. Certain subject-matters there are, about which the nominal monarch and the operative sub-monarch are, at all times and in all places, agreed: the accumulating in the hands of the monarch, of the external instruments of felicity in as large a mass as possible, in particular,—power, money, and means of vengeance: at whatever expense, on each occasion, the sacrifice is to be made: whether at the expense of his own subjects, or the members of a foreign state, or of both together, as in so far as war is the occasion, cannot but be the case. In this, master and servant behold the common end: and to the servant it belongs to provide the means in the shape and in the quantity necessary and sufficient for its purposes.

Thus far they are sure to agree. Meantime, the occasions for disagreement can never altogether be wanting. With the monarch, the first object is of course to provide for his personal gratifications. But for this, no funds which it is in the power of the minister to provide can ever be sufficient. Buildings suffice of themselves to create an appetite, the satiation of which is impossible. To decorate one single spot during a course of years, cost France, under Louis the Fourteenth, a sum—recollection is not able to state in what degree above or below the whole expense of government during that time.

The allotment of all the situations attached to the official establishment, is regarded by the minister as being at his disposal. But the monarch has, in both sexes, his associates, his instruments of pleasure in all its forms—in a word his favourites. These favourites are not themselves men of business or women of business. But each such favourite is himself or herself, as the case may be, connected with a number of dependents, among whom men of business, and men desiring to be men of business are abundant. A vacancy takes place, and now comes the contest: the contest between the monarch's dependent and the minister's dependent.

Meantime the process of depredation and oppression goes on its course: the torment of the people goes on increasing: increasing and in such sort that it finds its way even to the royal or imperial breast. How so? Is it that in that breast there ever did exist or ever can exist any real sympathy for the misery of the people? Not until it has first existed in his bronze similitude. But be the palace where it may, the discontented are to be found in it. Next to none can have all they wish for: and every one who cannot have all he wishes for, is more or less discontented. So many discontented persons, so many eventual tale-bearers and accusers of the minister, watching every occasion that affords a promise of being a favourable one. A class of misdeeds, the idea of which is in every state of things of a nature to create in the royal breast a sentiment of displeasure, is every considerable depredation, in the benefit of which he has not, either in his own person or in that of a favourite, any share. A misdeed, which in ordinary times, in the ordinary state of things, is not of a nature to produce any such displeasure, is the production of human suffering, from which whatsoever be the amount, no disturbance to his own ease is apprehended,—and which threatens not to be productive of anything worse than suffering on the part of the people.

But by those by whom injury in all its forms is done day by day to millions, (and to many of them in its worst forms,) no certain assurance can ever be obtained but that among the millions whom oppression has wounded, there may not be some one, into whose hands despair may have put the dagger of an assassin: but that of so many thousands who are throwing away their lives in the endeavour to destroy by thousands strangers, none of whom have done them any injury, some one may stand up and turn the instrument of death against an individual (against whom there is no other mode of defence) whose whole life from beginning to end is one continued act of injury, to the millions whose lot has cast them under his feet. Fear of personal safety is therefore of necessity one among the attendants round every throne. When therefore by the lips of an aspiring talebearer hints are given of the misery endured by the oppressed people, fear of course presents itself to the imagination.

Meantime, whether sanity or insanity be the state of the monarch—whether in the acts to which the name of the monarch is affixed, the judgment and the individually directed will have any or no part—be the whole tenor of the government more or less predatory, more or less oppressive—the suffering of the people more or less intense—the conduct and frame of mind of the monarch is depicted in all statements which have any pretensions to the character of authenticity, under the same aspect of unrivalled and unwearied excellence. For the *bodies* of two monarchs, two portraits, both indeed beautiful, but beautiful in two different forms, are found necessary; but for the *minds* of the two, one and the same portrait is always found sufficient.

In England, of the hundreds of laws passed every year, not one is passed, in and by which the king does not join with the sham representatives of the people, and the but too real representatives of the lords, in declaring himself to be the most excellent. By the declaration of all who join in the devotion in a Church of England church, every English king is most gracious and most religious. Most gracious alike he who never smiles and he who sometimes does smile: religious alike the bigot and the unbeliever, the infidel with a mask and the infidel without a mask. Sunday after Sunday, Charles the Second, while making his jokes, of which religion was the standing object,—Charles the Second, who was really the most gracious of English kings, heard himself proclaimed in the same breath, by consecrated lips, the most religious.

In compensation for all this evil, it rests upon the advocates of monarchy to show, if they are able, in which way it is, that by an individual with the title and power of king or emperor, is produced a mass of good outweighing that evil; being at the same time greater than that which would be produced by that same individual in the situation of chief of a republic: that a greater addition is made to the stock of happiness, in their respective communities, by Emperor Alexander or King George, than was by President Maddison, or is by President Monroe,* in the Anglo-American United States.

With respect to a pure monarchy, though it may in any particular instance by accident be less bad: yet an aristocracy-ridden monarchy, of which corruption is the characteristic instrument and distinguishing feature, may by accident, and that an accident of no unfrequent occurrence, be still worse. Folly next to idiotcy, or tyranny next to raving madness, may at any time be the condition of the one upon whom the condition of every other member of the community depends:† and so long as this is the case, either by the monarch himself or upon some one located by such a monarch, are all official situations filled: and in that case, upon what footing the probability of official aptitude and official frugality stands, may be left to be imagined. But in a pure monarchy not only fear, but a more generous sentiment might of itself suffice at any time to produce a felicitous change. In an aristocracy-ridden monarchy, fear is the only source of hope.

Effective benevolence on this extensive scale, why should it not take the place of playing at soldiers, or field sports, or games of skill or chance?

Catherine the Second and George the Third differed about the dominion of the seas, but agreed in turning buttons. George kept to the buttons; Catherine quitted them for codification: and though her patterns, out of which she made her patchwork, were inadequate, they were the best that were to be had.

Amongst other reasons in favour of a democracy, is the absence of the great prize by the appetite for which private assassination and civil war are so apt to be produced in monarchies.

Established by Nicholas, a free representative assembly would be a life insurance office: the only one in which an autocrat can insure his own life.

Pure monarchy is the rock which, having been placed and poised by accident, the push of a finger has sufficed to move: broad at bottom, pointed at top, a representative democracy is a pyramid.

What the aristocrats aim at is, security for themselves as against the monarch, with the largest possible share in his power, and without any security for the millions against that depredation, in the profit of which they are sharers. Sharers in his power, together with the money and the exaltation attached to both (and for the exaltation at the expense of the millions, there is no humiliation they will not submit to as towards the monarch, for they

* 1823.

† Not to speak of Austria or Prussia, witness Naples, Sardinia, Sweden, Russia, Portugal, Spain, and England.

sentiment is *secure* the *humiliation* of the *military*: *therefore* the *greater* his *exaltation* the *greater* is *theirs*. They are thus *gainers* by the *humiliation* they *submit* to. As to *monarchy*, what they would wish is, that for the *people* against themselves in union with the *monarch*, there should be *none*: while against the *people* for themselves and the *monarch*, it should be *entire*.

In the *view* taken of the field of legislation, by the *scribe* of the *absolute monarch*, it *swarms* in *every part* with *rebels*. To afford *security* to him against the *enterprises* of *adventurers* in this *shape* is the *most anxious* of his *cares*. He is *encompassed* with *enemies* on all *sides* and at all *times*: the *very form* of his *government*, the *objects* and *designs* so *undisguisedly* *evidenced* by *it*, suffices to *convert* into *adversaries* to him, all *men* who are *not* so to their *fellow-countrymen* and themselves. Of their *hatred*, he *assures himself*: of the *justness* of *it*, as well as of the *impossibility* of *keeping it* from *coming into existence*, he is *fully conscious*. The *utmost* he can *hope for* is to *guard himself* against that *part* of its *effects* which is *most formidable to him*. In this *view*, he *scruples not to appoint punishment* for the *manifestation of it*: *punishment* for all those *who*, *seeing* what he is, make *known* to *others* *what they see*: *punishing* all who, on any *occasion* on *which their sentiments* are *other* than *favourable to him*, make *known* those *sentiments*. If there be any *sure methods* of *creating hatred*, this is *one of them*: but *seeing love hopeless*, *seeing every affection better* than *hatred*, *inconsistent with every rational view of the case*, he is *content* thus to *draw upon himself hatred*, *for the additional chance* *which he thus thinks to give himself of escaping from the effects of it*.

Thus in the *case* of the *absolute monarch*: *and in this respect*, the *case of* the *limited monarch* is *not materially different*.

Turn now to the case of representative democracy. In the *representative democracy* *there are no rebels*. In the *penal code* of the *representative democracy* there is no *such crime as rebellion*. In the *representative democracy* *there is government*; there may, *therefore*, be *resistance to government*. In the *representative democracy* there are *rulers*: there may, *therefore*, be *resistance to rulers*. Under one *government*, as well as under another, *resistance to rule*, must be *punished* or there is *no rule*. But it is *punished* as *such*, and only *as such*, and *not as rebellion*. Suppose even a *conspiracy* to *overturn* the *government*, and *substitute* to it an *absolute monarchy*: for *under every such democracy* the *supposition* may be *made*, though under the only *established democracy* as *yet* exemplified, the fact is *morally impossible*.

Suppose, then, a *conspiracy* thus to *destroy* the *government*. The *conspirators* are *enemies*, but they are *not rebels*. The *state* they have *placed themselves in*, with *relation* to the *rulers* and the *rest* of the *community*, is a *state of war*. Being *enemies*, the *case* of *self-defence* *renders it necessary* they *should* be *treated* as *such*. They *must* be *opposed*, and, by any *means*, *disabled* from *giving effect* to their *mischievous endeavours*. But, as in the *case* of *external enemies*, so in the *case* of those *internal ones*, such *means* of *self-defence* as are *least mischievous* to both *parties* taken together, are the *only measures* *allowable* or *justifiable*.

As to *hatred*—*hatred* fixed on *one fixed object*, here there is no *such thing*.

Pure *monarchy* was the *original*, because the *simplest form* of *government*. It had its *origin* in the *necessity men were under* of *putting themselves under the command* of a *single chief*, in the *wars* between *one savage* or *barbarous tribe* and *another*. Thus came on the *one part*, the *habit* of *obedience*, on the *other part*, the *habit* of *command*, and by the *frequency* of *actual war*, and the *constancy* of *preparation* for a *state* of *war*, the *habit* of *obedience* and *command* was *preserved* from *interruption*.

The *children* and *next relations* of the *monarch* being *naturally most frequently* in his *company*, and in the *largest proportion*, *sharers* in his *confidence*, hence it was that the *elective monarchy* *naturally passed* into an *hereditary* one.

But though this was the *natural*, and in *early times*, the *inevitable state* of *things*, it *follows not* that it was the *state* of *things* in the *highest degree contributory* to the *greatest happiness* of the *greatest number*.

Monarchy comes to have place now, by its being *established*: *almost all men* are *born* under it, all *men* are *used* to it, few *men* are *used to anything else*: *till* of *late years*, *nobody* ever *dispraised it*; every *body* *praised it*: *nobody saw anything better*, *nobody knew* of *anything better*, few had *heard* of *anything better*: *men* were *reconciled* to *mixed monarchy* in *England*, by the *same causes* by which they were *reconciled* to *pure monarchy* in *Morocco*, *Turkey*, and *Hindostan*. No *state* of *things* so *bad*, but that *acquiescence* under it, may be *produced* by *ignorance* of *better*: in a *word*, by *habit*, by *authority*, and by the *instruments* of *corruption* and *delusion* by which it *became surrounded*.

It was not by any *experience* or *supposition* of its *advantages*, that it *became established*, or has been *continued*: *meaning* its *advantages* to the *many*, by whose *obedience* and *acquiescence*, the *power* belonging to it is *constituted*.

Section III.

Monarchy,—its Instruments—Corporeal and Incorporeal.

The *frame* of *mind* given to *man* by this *situation* has been *seen* above. *Behold* him *now* in *action*. In the *field* of *political life*, *action* *cannot* be *without instruments*.

His *instruments*, *real* and *corporeal*, are *three*: the *soldier*, the *lawyer*, and the *priest*:

his fictitious and incorporeal are four: force, fear, corruption, and delusion: with these incorporeal instruments he by the hands of his corporeal instruments works.

For the sake of an always questionable (and at the utmost comparatively inconsiderable) addition to his own felicity, to give unquestionable existence to human suffering in all its shapes, and infinite in quantity—this is the course of action which at every moment of his life the sinister interest inseparably attached to his situation urges him to: and power being in adequate quantity always in his hands, the result, as has been mentioned, is correspondent.

Vain would it be to say, evil in all these shapes is the effect of man in general, of government in general; not of monarchy in the persons of the monarch and his instruments.

No, they are not the effects of government, they are only the effects of misgovernment. They are not the effects of government; for a representative democracy is a government: the Anglo-American United States are a representative democracy, and in the United States no such evil effects have place.

Arch-forciant,* arch-terrorist, arch-corruptor, arch-deluder—this a monarch is, by the mere virtue of his situation, without need of action on his part, without need of so much as *volition*, without any such interruption to his ease: his instruments, in their several situations, are sub-forciant, sub-terrorist, sub-corruptor, and sub-deluder.

As to the corporeal instruments: each of them contributes in his own particular way to the common end, the fulfilment of the constantly sinister will of the public enemy. In one way or other, on one occasion or other, all the several incorporeal instruments of misrule operate in their hands: by this or that corporeal, this or that incorporeal instrument is made most use of; by this or that other corporeal, this or that other incorporeal.

As to the soldier: force and intimidation are the incorporeal instruments which, in the more direct and intentional way, under a monarchy, he is occupied in applying to the all-embracing and constantly pursued purpose. But by his pay and privileges he is made to belong to the monarch's stock of the instruments of corruption; while, by the place he occupies in the vast machine, of which he is one of the puppets, and the glitter with which he is environed, he contributes at the same time to the amusement of his owner, and to the delusion of the subject many—setting to work their imagination, perverting their judgment, and from the power and splendour which they see, causing them to infer the existence of the excellence, moral and intellectual, which they imagine.

Next as to the lawyer: external are the enemies against whom the force and intimidation, by which the soldier operates, are principally and most avowedly prepared: but incidentally as often as occasion calls, the force has for its destination the being employed against the subject-citizens, in their character of most natural, most constant, and nearest enemies. The force which it is his destination to apply is in each instance applied upon the largest scale. The enemies to which that force is applied, which is at the command of the lawyer, are no other than those same internal enemies, and in its application to them, it operates upon the smallest scale.

Force and intimidation are the only instruments to the use of which the operations of the soldier are properly directed. Of corruptive influence, he sees no need: of delusive influence, as little.

Delusion is the instrument for the application of which the faculties of the lawyer are principally applied with most constancy and most energy.

By the force of his imagination he creates a sort of god or goddess upon earth, a sort of divinity, which he calls common law. Of this goddess the principal occupation is the finding pretences for giving fulfilment to the monarch's sinister will, as evidenced by his sinister interest: to lodge in the hands of the monarch the external instruments of felicity, in the largest quantity, and to exercise for that purpose the arts of depredation and oppression, all for the benefit of the monarch: his subordinate occupation (subordinate in profession, principal of course in fact) is to exercise the same arts for his own benefit.

The common law not having any existence, cannot serve as a justification for any thing. In the face of the whole community, who, in so far as they have courage and energy to open their eyes, see that it has no existence—in the face of the whole community the existence of this goddess is on every occasion asserted, and to this goddess are ascribed the two wills, to which execution and effect are to be given, the will of the monarch, and the will of the judge. What, for the benefit of the monarch the judge has been inflicting on the people, to a certain superior degree, the monarch connives at his inflicting for his own benefit in a certain inferior degree.

Now as to the priest: In him may be seen another of the monarch's corporeal instruments of whom delusion is the principally employed incorporeal instrument. Physical force belongs not to his province: intimidation, yes. But it is by delusion that the intimidation is produced. The business of the lawyer is, to do, in the first place, the will of the monarch; in the next place, his own. In this the business of the lawyer and that of the priest agree. What difference has place between them lies in the means: in the different forms and degrees of the intimidation they employ.

* (Arch-forciant.) English lawyers have in their language a *deforciant:* a man by whose force some other man is put out of the possession of something that of right belongs to him.

In respect of moral frame of mind, widely different are the effects which under a monarchy are produced in the three professions. The soldier stands by himself. Force and intimidation, the instruments he applies, are no other than those without the eventual application of which, the best government could no more have existence than the worst. Neither corruption nor delusion does it belong to his province to apply: neither of the one nor the other instrument is the application expected at his hands: neither the one nor the other is it natural for him to seek to apply: delusion, in particular, is much more likely to find in him a contemner than an approver.

Between the lawyer and the priest, the similarity of situation, and thence of frame of mind, is close and intimate. In governments in a state reputed semi-barbarous, they have been united in the same person. In England, priests were for a long time the only lawyers. The coif over the covering of the priestly tonsure is still an ingredient in the composition of the masquerade dress with which the lawyer bears evidence of the association to this day.

In the Mahomedan religion, the priest is the only judge. In England the instances are at the present day abundant in which the subordinate judicial situation of the local judge, called justice of the peace, is added to the functions, performed or not performed, of the priest.

In so far as for relief from their sufferings, the mind of the people can find a place for hope, the situation and natural character of the soldier is the chief, if not the only source that can be found for it. The great instrument of democratical government, the great support of the universal interest of the people against all particular and sinister interests—the force of the popular or moral sanction, brought into action by the public-opinion tribunal—has everywhere and at all times found far more sensibility to it in the breast of the soldier than in the breasts of either of those functionaries who work with delusion for their instrument. Accordingly, on those great occasions in which, against oppression by monarchs, the interest of subjects has found effectual supporters, soldiers have been so by thousands, lawyers and priests only by units.

In an army, a standing army, the monarch beholds the support to his power at home and abroad: an instrument for the extension of it, at the expense of the other members of his own community—his subjects, as the phrase is: a toy to play with, a doll to dress up, an instrument of delusion for producing, to his own advantage, erroneous conception on the part of the people; and an instrument for the gratification of vanity, on the occasion of his intercourse with the other members of the confraternity of monarchs.

Of his personal gratification in all other shapes, the more immediate instruments are his courtiers. Between his courtiers and his generals, the benefit of whatsoever real sympathy the individual nature of the monarch is susceptible of, is shared.

With the contempt of which all who are beneath him are essentially objects, a mixture of sympathy and affection for those who are about him is not impossible. In the case of no others does the contempt admit of any other admixture than that of antipathy and hatred.

In the lawyer he is not likely to find a favourite. Neither in the idea of an intellect replete with absurdity, of morals distinguished by harshness, exercised in the production of suffering, and by an intensity of reflection that seems to put an exclusion upon gaiety, as well as sincerity, is there much to attract sympathy or promise amusement.

In the priest he is not likely to find a favourite. Neither in the repulsive aspect of melancholy, nor in that of imposture, assumed for its own benefit, is there anything to attract sympathy or promise amusement.

Regarded in the character of necessary instruments, men in their situations will naturally be treated with more or less of condescension, and marks of kindness and esteem, by a man in his. But unless they are, and in so far as they are, willing and able to divest themselves of their distinctive professional characters, their company will not naturally be very acceptable.

Section IV.

Monarch's Interest,—how far opposite to, how far co-incident with, the Universal Interest.

A community of interest (it may be said) has place between a monarch and his subjects: and this community of interest will suffice for securing them against ill treatment at his hands: for securing to them the best treatment in his power. True. There is a community of interest between a postmaster and his post-horses: but this community of interest suffices not for saving them from an untimely death, at the end of a life of torment. The interest which a monarch has in common with his subjects, is not sufficient to render him in general so well disposed towards his subjects as a postmaster is to his post-horses.

Spite of whatsoever there is in common between the two interests, in the breast of every monarch, the tendency of his disposition is at all times and in all places to produce the greatest infelicity of the greatest number. Such is everywhere the tendency necessarily produced by his situation, and such everywhere (except in so far as accidental circumstances have risen up in opposition to such tendency) has been, and so long as a monarchy exists upon the face of the earth will be, the effect.

The more particularly the several shapes in which interest has place in the two situations are examined into,—the more particularly the

several departments in the field of legislation to which it applies are examined into, the less numerous the points of coincidence, the more numerous the points of opposition, as between the two interests, will be seen to be.

Take, in the first place, the two immediately subordinate ends of the constitutional code,—maximization of appropriate aptitude on the part of functionaries, and minimization of the expense attached to the employment of them.

As to expense: with relation to the interest of the monarch, the aggregate of the expense may be distinguished into two portions: that in respect to which his profit is equal to the expense,—the whole being to him so much profit; and that in respect of which, his profit, though not equal to the expense, is in proportion to it, increasing as it increases.

Next as to appropriate aptitude: In a republic, appropriate aptitude, means aptitude with reference to the greatest happiness of the greatest number. In a monarchy, appropriate aptitude, means aptitude with reference to the supposed greatest happiness of number *one*. But on the imagination and judgment of this same number *one*, the greatest happiness of this same number one, will consist in the subserviency of all other wills, and of the conduct of all other persons, on each occasion to the will of this same number one. But what may happen, and has continually been happening, is, that while in the breasts of the greatest number of his subjects, infelicity has been continually on the increase, the will of number one has been continually obeyed by all.

Take, in the next place, the four immediately subordinate ends of the non-penal or distributive branch of law: subsistence, abundance, security, and equality, maximized in so far as the less important are compatible with the more important.

1. Subsistence. This, it is true, it is his interest they should have: that is to say such of them as are in a condition to work, and can be made to work. But it is the interest of the greatest number that, whether able or not able to work, they should live, which is as much as to say, that they should have subsistence.

2. Abundance. This also it is his interest they should have, and the greater the quantity they produce, and thence have, the greater the quantity which it will be in his power (as it cannot fail to be in his inclination) to get out of them for himself. But, so long as by any act of his, any addition, how small soever, which would otherwise be made to the stock of the matter of abundance, passes into and through his hands,—how great soever may be the quantity which, by the same act, is taken out of their hands, or prevented from finding its way into them, will, with reference to his interest, be matter of indifference.

3. Security. Security is for body, mind, reputation, pecuniary property, power, condition in life: it is against injury at the hands of external evil-doers, internal evil-doers not being functionaries, and internal evil-doers being functionaries. Security against external evil-doers, *i. e.* against foreign enemies, his personal interest prompts him to maximize, so long as no expectation of profit presents itself, from the diminution or destruction of it. But that which he is continually upon the watch to get, is an augmentation of the mass of the external instruments of felicity in his hands, at the expense of other communities; and by means of war,—that is, murder upon the largest scale,—he never can get it, but by the diminution of the security of his subjects.

As to security against misdeeds on the part of functionaries, security against the abuse of their own power,—the very idea of it is intolerable: as if in their hands power were capable of being abused!—as if wrong could be done by him, by whom no wrong can be done!—by him, for whose benefit that which if done by another would be wrong, is by the mere circumstance of its being by him that it is done, converted into *right*.

4. Equality. In a republic, the instrument of felicity thus denominated is watched and guarded with peculiarly anxious care. It is prized, not only as being in its own character an instrument of felicity, but an instrument of security, for security itself: in particular, for securing all the several instruments of felicity to all the members of the community, against invasion on the part of such of them as are in the situation of public functionaries.

But to the monarch, the very word is an object of abhorrence. To give admission to it in the list of fit ends of the distributive branch of law, is at once to put an exclusion upon his office: to shut the door of the official establishment against him. Of all the imaginable instruments of felicity that can be named, not one is there in which he can endure the idea of seeing any other member of the community possessing an equal share.

In particular, not so much as an equal share in the protection of the laws: in the benefit derived from the services of the officers belonging to the judicial department, directed as they are or ought to be, to the securing to every member of the community his proper share in the aggregate stock of the external instruments of felicity: against evil in the several shapes in which it is endeavoured to be excluded, by prohibition and punishment attached to the several misdeeds by which it is liable to be produced.

In the next place, take the penal branch of law. Immediately subordinate ends—beneficial effect of the distributive branch of law maximized; punishment minimized.

With regard to the distributive branch of law taken in its several sub-branches, it has been seen how far in the situation of monarch his particular interest is accordant and coincident with the universal interest; how far opposite to it.

First, then, as to the maximization of the

beneficial effect in question. So far as the above-mentioned coincidence has place, it is his interest that the universally beneficial effect may, by all imaginable means, and by this principal means in particular, be maximized. But so far as, instead of coincidence, opposition has place, this same particular interest of his requires that the amount of these same beneficial effects be minimized; or in other words, that none such should exist, but that the opposite evils should have place.

Next as to the minimization of punishment: So far as by the infliction of punishment, misdeeds on the part of any individual, in or not in the situation of functionary, tending to promote his particular interest—vengeance and ease included—would be repressed, his interest requires that no punishment at all be inflicted: or if any, none beyond the least possible.

So far as by the infliction of punishment, acts tending to the security of individuals against misdeeds, the commission of which, as above, is required by his particular interest, would be prevented, (and thence his power of evil-doing restricted, or any gratification afforded to his appetite for vengeance, or any security afforded him against disturbance to his ease,) his particular interest requires that punishment be minimized.

So much as to the several external instruments of felicity and proper subordinate ends of government.

As to moral virtue; or, speaking with relation to felicity, moral aptitude, this, his interest prompts him to maximize on the part of his subjects: viz. so far, and so far only, as by the possession of it they are disposed to do his will and contribute to the advancement of his particular interest.

But at the same time, his interest renders him desirous to minimize it in so far as, by the possession of it, men are disposed to thwart his personal interest in all its several branches, preferring their own interests respectively to his.

As to intellectual virtue, or say, intellectual aptitude:

In proportion as useful knowledge and sound judgment, as applied to the field of legislation, increase, the opposition of the interest of the monarch to the rest of the community will become more manifest; and with it the want of virtue, moral as well as intellectual, betrayed by the nation, by which any such office in the official establishment is suffered to have existence: an office which may be styled that of malefactor-general.

Section V.

Cause of Monarchical Misrule—Sinister Interest, not Upright Prejudice.

The amount of misrule and its effects being given, a standing question, a question that, on each occasion, presents itself is—as to how much of it is owing to moral inaptitude, how much to intellectual: how much to sinister interest, how much to prejudice, whether interest-begotten or derived from other causes. The question, however, is a matter rather of curiosity than of use: of use to the purpose of affording guidance to practice. Take this or that anti-popular arrangement at pleasure: if not its creation, its preservation is, at any rate, the work of the sinister interest. Independently of the sinister interest, be the institution, be the arrangement, be the phantasm of the imagination ever so absurd, go back far enough, you may always find honest absurdity, honest intellectual weakness sufficient for the creation of it. How can it be otherwise!—since, among the people at large, notions fraught with absurdity are not without example, notions which, being adverse to the interest of those by whom they are entertained, cannot have had for their cause sinister interest; at any rate, cannot have had correct perception of particular interest.

But so long as it is by the sinister interest that the causes of evil are supported and maintained, whether it was in the moral part or in the intellectual part of the mental frame that the evil had originally its rise, makes nothing to any practical purpose.

Many are the instances in which that which at first sight will present itself as the result of intellectual weakness, will, on scrutiny, be seen to have been the genuine fruit of sinister interest: and the more closely the mechanism of misrule is scrutinized into, the more extensively will this genealogy be seen to have had place.

One universally applying maxim, the genuine fruit of the sinister interest, serves as a means of preservation to absurdity in every imaginable shape. Though the absurd institution or arrangement is not productive of any immediate advantage to yourself, says the modern Machiavel to his patron, preserve it notwithstanding: for though the existence of it does not serve, the abolition of it would dis-serve, your own particular interest. To justify the abolition, it would be necessary to bring into action some position conformable to reason, and bearing a reference, more or less obvious, to the all-comprehensive and universally-applying principle—the greatest-happiness principle. But by homage paid to that principle, you put arms into the hands of the adversary: when the absurd arrangement, from which you derive no advantage, is disposed of, presently after comes the adversary and proposes the abolition of an absurd institution and arrangement, from which you do derive advantage: and, as a ground for the proposition, out comes this position which you yourself having made use of, and paid homage to, you cannot oppose or elude the force of, without rendering your insincerity and the corruptness of your disposition manifest.

Let this, then, be the general rule, acted upon in all cases.—Whatsoever institution or arrangement is adverse to the universal in-

terest, is the result of the particular, and thence sinister interest of the ruling class. In few instances, indeed, if in any, will the position be wrong in theory: where it is wrong, the error will not be productive of any evil consequence in practice. Not so, if the cause being sinister interest, the effect is ascribed to a mere error of the understanding. In this case, it is to the curing men of their error, that all your exertions will be directed—to the changing into converts the opponents you have to deal with. Full of this conception, you will keep labouring and labouring on till you are tired: while you are labouring, the adversary is laughing in his sleeve.

Another bad consequence: So much for your adversaries the corruptionists. Now for the bystanders, in the character of members of the public-opinion tribunal. Seeing that, even in your opinion, all its hostility notwithstanding, the fault, if any, is in the understanding of your adversary, not in his will—in the intellectual part of his frame, not in the moral—they, in their impartial situation, cannot think less favourably of him than you do, in your hostilely partial situation: along with you, they will keep looking for the time when, in consequence of the rectification of his judgment, his conduct will be rectified, which time, the cause of the wrong not being in that place, will never come. All this while, had the real seat of the wrong been known to them, they might have acted accordingly. Seeing the adversary in his true colours, they might have joined with you in acting upon him in the only quarter in which, from this time to the end of time, he can be acted upon with effect,—they might have acted upon his fears.

Whatsoever talent and whatsoever industry there is being employed in keeping the sinister interest covered by a veil as impenetrable as possible, no wonder if it should escape from the observation of most eyes.

Behold an example of the mischief to the people from the imputing to error the result of sinister interest. True cause of the excess in military establishments, kings' sinister interest, erroneously ascribed as being necessary to defence against foreign aggression.

When in this way rulers have, at such vast expense, done each of them his utmost, then will they be all of them, with their respective masses of force, bearing one to another a certain proportion: keeping thus the same proportion, they might divide each of them his force by the same divisor,—say two, say ten, say a hundred, and the quotient being in the same proportion, the security would, on the part of each of them, be the same. Some number of years ago* did the idea occur to me—I know not how many, except that it must have been before my eyes had applied themselves with any closeness to the constitutional part of the field of law: my good fortune—I know not exactly in what way—saved me from the disappointment and loss of time which a proposition of so Utopian a cast would have had for its fruit. Yes: were it merely as instruments for the defence of the community and the territory against foreign aggression, that an army is kept up. But besides that, it is kept up for the defence of the country against its inhabitants,—for the defence of the monarch, his instruments, his favourites, and his dependents, against resistance to legalized depredation, oppression, and vengeance: it is kept up as a toy for the great baby to play with, and as an instrument for the gratification of his vanity: and how ill any of these purposes would be served by retrenchment, is sufficiently obvious.

While the sinister interest continues on its present footing, to propose anything that would be beneficial to the community, upon a sufficiently extensive scale to be worth thinking of, is not simply useless,—it is positively pernicious. It operates as a certificate, that, on the part of those on whom acceptance depends, a disposition to act in conformity to the universal interest has place,—a certificate which neither is, nor by possibility can be, true. The persons to whom it is addressed, are those on whose exertion depends the only state of things in which anything good that depends on government can ever be brought into effect. In this same certificate, therefore, is contained the implied assurance, that such exertions are not needed. Of the existence of this persuasion, on the part of the projector, a proof is thus given, much more conclusive and impressive than could be given by any positive and direct assurance given in words: in this case, the existence of the persuasion is indubitable, for it is upon the ground of it that the man himself has acted.

In England, this hopelessness of everything good has never been a secret to the Whigs.* Accordingly, show them anything good, their answer is, of course,—Under the present administration your plan is hopeless: it is a good one, and by them no good proposal will ever be adopted: by us, all good proposals will be adopted: if you wish anything good to be done, look to us. What is true, is—that there is not any ground for hope from their antagonists: what is not true, is—that there is ground of hope from themselves. In them, there would no more be either power or will to do good than in their more fortunate and prosperous adversaries.

SECTION VI.

Inaptitude attached to the situation of Monarch in a mixed or say limited Monarchy—his power having for its instrument of limitation the

* Written in 1822. See a "Plan for a Universal and Perpetual Peace," vol. ii. p. 546.—*Ed.*

* The Whigs were not in office when this was written.—*Ed.*

power of a body acting as a representation of the People.

Inaptitude opposite to moral aptitude. In this situation the causes of enmity are more active: of resistance, the symptoms are continually obtruding themselves on observation. Though on every occasion the issue is out of hazard, on every occasion a contest with circumstances of irritation has place.

To moral inaptitude in the shape of cruelty, is in this situation necessarily added, immorality in the shape of insincerity and deception. The representation of the people is in a state of corruption: the people themselves are in a state of delusion. If the representation were not in this state of corruption, no such office as the kingly office would continue. If the people in a vast proportion were not in a state of delusion, no such office as the kingly office would continue.

Of that portion of the external instruments of felicity, which otherwise might be, and in the situation of absolute monarch, would be, employed by him in the endeavour, how vain soever, to make an addition to his own personal felicity,—a portion more or less considerable, must be employed in the keeping in a state of perpetual corruption, and perpetual subserviency to his sinister interest, the delegates, real or pretended, of the people: in securing on their part a constant breach of such their trust. In the majority of these men, the people in as far as they see clearly, behold their determined and implacable enemies, subordinate depredators, who, under the orders of the supreme depredator, concur with him in the work of depredation, at their charge. In the eyes of a monarch they are at the same time *his* enemies: partly because the quantity of the matter of depredation seized by them is not adequate to his desires; and partly on account of the vast share which he finds himself under the necessity of abandoning to them, in consideration of the work which in fulfilment of the sinister contract, it it is necessary should be performed on their part.

At all times, until the old man of the sea has been shaken off from the shoulders of Sinbad—in every monarchy, one and the same option, and that in both parts, a disastrous one, will be presenting itself to the monarch's choice: the option between magnitude and stability. In some eyes increase of stability may be seen provided for, in the expedient of imparting a share of power, either to a representation of the people alone, or to a self-representing aristocratical body, or to both together.

Under a limited monarchy, while the subject many have everything to fear, from that immorality which, in company with a convenient mixture of religious hypocrisy and religious bigotry, has its seat in the bosom of the ruling one, with the sub-ruling and influential few, life, property and liberty have everything to fear; from the subject many, such are they as to morality—such are they as to religion—the ruling one, with the sub-ruling few, (and such of the opulent and influential few as make common cause with him,) have nothing to fear. Witness, on the one part, the Manchester massacre: men, women, and children, killed by units, wounded by hundreds, for coming together unarmed to make communication of their sufferings, and hold converse on the hope and means of relief: a priest ordering the slaughter, and receiving at the hands of a servant of the monarch (by an act, followed by words of general approbation, pronounced in the most solemn ceremony by the monarch) a benefice of £2500 a-year value, for having ordered it. Witness, on the one part, this Manchester massacre: witness, on the other part, the patience of the subject many under it. On the one part, slaughtered by wholesale, with an avowed readiness, on any similar occasion, to repeat it,—the slaughter upon a general view of it, thus avowed: while, for any such purpose as that of regular and impartial judicature, no particular view of it suffered to be taken. On the one part, slaughter by wholesale thus committed, rewarded, avowed: on the other part, no such slaughter by wholesale, or so much as by retail, executed, attempted, or so much as recommended. On the one part, all injury: on the other part all patience. But, when injury has spread to a certain extent, and reigned for a certain length of time, patience may, in the event of its continuing longer, on the same spot with injury, begin to regard itself as an accomplice: and, taking counsel of desperation, rather than act in that character, yield its place to retaliation, coming forth under the name of justice.

Section VII.

In a limited, or say rather a mixed Monarchy, the Aristocracy are not in practice co-equal with, but dependent on, and Instruments of, the Monarchy.

It is by force and intimidation that the conduct of the people at large is determined. In England it is by corruptive influence that the conduct of the majority in each of the two houses of parliament is determined: in the House of Commons in the first instance, and then in the House of Lords. The matter of corruption, so far as the monarch is concerned, on whose will does the application of it depend? On that of the minister. And the minister, on whose will does his existence in that situation depend? On the king.

Let the king give to what man he will the disposal of the matter of corruptive influence, the will of that individual is sure to be done by the majority in both houses.

Events may happen, events which for a time may make the king see a convenience in substituting to a minister more agreeable to him,

a minister less agreeable to him. But in this temporary exception there is nothing that detracts from the truth to all practical purposes of the general rule. In this there is nothing more than what is every now and then happening in the most absolute governments, that of Turkey not excepted.

But the fact is, that whatsoever is done, it is with the king's will that it is done: in each instance it may or may not have originated in the king's will: but in whose will soever, what is proposed is originated, if it be against the king's will, it is not done.

Of the absoluteness of the king's power, a conclusive proof is that which was brought to view in a House of Commons' debate, in the session of 1822. Motion by Mr Brougham: object of it, holding up to view what is called the influence of the crown: that is to say, the absoluteness of the king's power, in respect of giving determination to the proceedings of the two sets of functionaries who are sharers with him in the supreme operative. Proof this,—when a man has been appointed to the situation of prime minister, a majority of the Commons' House will vote according to his will, after having but a few days before, namely when he was not minister, but in opposition, voted against it.*

Instances have happened in which the king has discarded a minister whom he had rather have kept, and appointed a minister whom he had rather not have appointed. True: but the minister who was not agreeable to him, never for any considerable length of time has been kept in office.

In the year 1806, Lord Grenville, Mr Fox, and Mr Addington, were in office together. Lord Grenville and Mr Fox were men disagreeable to the then king: Lord Grenville on one account, Mr Fox on another: Lord Grenville from his personal demeanour, Mr Fox from the too great popularity of the principles professed by him. It was the desire of Lord Grenville that the oppression under which the Catholics had so long been suffering, should be removed: this was also the desire of Mr Fox. But the will of the king was opposite and inflexible. He refused to adopt the measure; found a favourable opportunity for getting rid of them, and dismissed them. Mr Addington was a man found to be agreeable to a king, whoever the king were, so Mr Addington was retained.

Section VIII.

Monarch—folly of regarding the personal deportment of, as a pattern for subjects, Geo. III.

If as above, in every intelligible and useful sense of the words, bad and good, so far from being the best, the monarch is naturally the very worst—the most maleficent member of the whole community—judge from him of the consequence of taking him and his conduct as a pattern for others—his conduct for their conduct.

By beneficence, positive or even negative on a small scale, he obtains a reputation by which he is enabled to practise, without reproach, maleficence on the largest scale. "Curse on his virtues! they have destroyed his country!" George the Third, because he behaved well to his wife, was proclaimed *the best of kings.*

Hereupon, whatever good conduct has place in domestic life, on the part of the other members of the community, this *one* has the credit of it.

Now mind the evil consequence. Of what is good and bad in private, and in particular in domestic life, men in all situations are competent judges, and in the habit of regarding themselves as being so, and taking cognizance of the conduct of others in consequence. On the other hand, of what is good and bad in public life, the greatest number are not as yet competent judges.

Yet in some monarchies—England for example—scarce an individual to whom it is not matter of habit to speak occasionally of the monarch and hear him spoken of, and with some adjunct of general approbation or disapprobation, such as good and bad, attached to his official or personal name.

But for a comparatively rare occurrence, this epithet will be of the approbative kind: the reason has been already mentioned. Note then the consequence. So it be, but through the ordinary causes, namely, war and selfish indulgence in the shape of what is called *magnificence*, there is no quantity of mischief so great, in shape of waste and depredation and murder, so it be upon a national scale, that a man in that situation may not be the author of, still remaining the object of general love and admiration.

Meantime, what shall we say of those who, seeing before them and set over them a man whose conduct is stained with these atrocities, gives to them the sunshine of his approbation by thus adding the word good (or its equivalent) to the name, official or personal, of the author of evil on this largest scale? Whatever he may be in intention, in fact and in effect, he is an accessory to all the atrocities by which the object of his ill-placed eulogy has been making an incontrovertible title to universal abhorrence. If in the course of a war, for the gratification of the monarch's rapacity or antipathy—a war, in a word, without necessity—a million of human beings have been consigned to untimely death, here are a million of murders committed; and he who thus pours forth benedictions on the head of the author, is accessory, before or after the fact, to all these murders.

* The Reform Act has somewhat altered this state of things. A very large portion of the House of Commons is now no longer under the immediate influence of the House of Lords: so long as the crown acts in unison with this independent portion, the House of Lords will oppose both the Commons and the crown.—*Ed.*

Nine times in the course of his sixty years' reign did George the Third, with his ever-ready accomplices, force the people to pay his debts.* The trader who, by inevitable misfortune—mere misfortune without the smallest cause of reproach, even on the score of imprudence, is rendered insolvent,—is thereby rendered in a greater or less degree an object of disrespect: still more, and in an increasing ratio, if the like misfortune comes upon him a second time. The insolvencies of George the Third were in every instance the result of his own profusion, without the smallest admixture of misfortune. No money could be issued without his signature: and he was notoriously attentive as well as punctual in the giving of it. He made immense profit by his wars,—profit to himself and family: witness the Droits of Admiralty; and he took care to exempt himself from loss: witness the exemption from the income-tax given to his private property in government annuities—or the *funds*, as the phrase is.

In Spain, about the year 1776, the avowed expenditure upon the persons of the king and his family, amounted to one-fourth of the whole expenditure of government: and to this avowed, unavowed expenditure was known to be added, to a vast though necessarily unascertainable, amount.

Of this expenditure, be it what it may, not a particle is of any real use to the people in any shape: not a particle, that besides the suffering produced by the loss, by the forced contribution, is not productive of evil to an immense amount: for of the matter of wealth thus extorted and wasted, every particle operates as matter of corruption.

It would be a calculation no less curious than instructive, how many of the people, by the support thus given to the lustre of the crown, are every year, consigned to lingering death for want of sufficient food, how many prevented from coming into existence.

The result is—that in all branches, the inaptitude is on all occasions, not in the individual, but in the *situation:* not in the particular nature of the individual in question, but in the general nature of the situation: that, the situation being what it is, the inaptitude is absolutely irremediable: and that, therefore, whatsoever be the political state, the existence of any such situation in the official establishment, is utterly incompatible with the greatest happiness of the greatest number—utterly incompatible with everything to which the appellation of good government, can, with any propriety, be applied.

That if, by a good king, is meant a king, by whose existence more happiness would have place in the community, than would have place, if neither he nor any other individual having the same powers, were in existence—there never has been, nor ever can be, any such person as a good king: and that every man who is a king, is, by the mere circumstance of his being a king, rendered of necessity a bad one. To talk of a good king, is to talk of white ink, or black snow.

In conjunction with external circumstances, idiosyncrasy may have rendered, and in fact to a certain degree, always does render, this or that king less bad, than this or that other. But to the practical purpose of the question, every such inquiry into the character of this or that individual, in that same situation, is needless and useless: indeed worse than useless, the tendency of it being to lead men to suppose, that from a substitution of one individual to another, in that situation, the evil may be capable of receiving a remedy: which, as already shown, is not true.

What in this case is the measure of the quality of bandess, or say, depravity in the human mind? Is it the *quantity* of human misery produced? Is it the degree of *steadiness* with which the probability of its being produced is contemplated, and the fixedness of the determination to persevere in the endeavour to give existence to it? Is it the absence of that distress, which in some cases is, by general acknowledgment, sufficient to render depredation, and even intentional homicide, justifiable? With these considerations in mind, compare the best of monarchs with the worst of private and punishable malefactors,—see whether as in the scale of political, so in the scale of moral depravity, the place of the unpunishable malefactor is not above that of the punishable malefactor.

As it is, in the case of that situation, by which the largest mass of political power is conferred, so is it in every inferior one. The probable quantity of virtue in a man, is not in the direct, but as will be seen, in the inverse ratio of his altitude in the composite scale composed of power, opulence, and factitious dignity.

Section IX.

Influence of Monarchy on the state of Judicature.

In a monarchy, on the part of the judges, corruption has place universally: on the part of almost all judges, at all places, at all times: corruption, practised upon the largest scale, and with impunity and assurance of impunity: impunity, perfect as against punishment at the hands of the legal sanction, and to a vast extent, as against punishment at the hands even of the social sanction.

At the hands of the monarch, and those who are in favour with him, every man for himself, and all those with whom he is connected in the way of interest or sympathy,—every man, and the judge, whoever he is, as much as any man,—has everything to gain, and so has he to

* Thus asserted in the course of a House of Commons' debate in the spring of 1821, say May or June: [by Lord John Russell on the debate on the civil list to George IV., 8th May 1821, referring to the Report of the Committee of 1815.—*Ed.*]

no inconsiderable amount to lose, or otherwise suffer.

In the track of partiality and injustice thus produced by corruptive influence, there are certain lengths which, under the fear of the public-opinion tribunal, this or that judge will restrict himself from going: but in that same track, there are certain lengths which no judge will ever restrict himself from going. What should make him? From yielding, he has everything to gain; from not yielding, he has more or less to fear.

On the alleged incorruption of English judicature, eulogy is indefatigable: and of this, as of every other alleged efficient cause of felicity, matchless constitution gets, of course, the credit.

This alleged incorruption what does it amount to, in fact?—incorruption on the part of a certain class of judges, as against the matter of corruption in a certain form: incorruption for small profit, and upon a small scale, coupled as above with corruption for unlimited profit, upon a national scale.

In this country, perhaps for two centuries, no example has ever been known or commonly believed, of one of the twelve judges taking a bribe on behalf of a suitor: not improbably none such has had place. By this circumstance is any proof afforded of incorruptibility—of any aversion to the being corrupted, on the part of any judge? By no means.

In no instance could a judge receive, in the shape of money, or other article of marketable value, a bribe, without putting his reputation completely in the power of at least one individual—namely, the one by whom, or on whose account, the bribe was afforded: seldom without putting himself in the power of individuals more than one. What should be a man's inducement thus to expose himself to infamy, not altogether without danger of legal punishment, for profit on a retail scale, while, on a wholesale scale, it is to be had to an amount altogether unlimited, and without any the smallest risk?

You who give them the praise of incorruption as thus proved, add to it, the praise of abstaining from picking the pockets of passengers of their handkerchiefs, in the streets.

SECTION X.

The Few,—Enemies of the Many,—the Many not of the Few.

Everywhere it has been seen, with the single exception of an aptly organized representative democracy, the ruling and influential few are enemies of the subject many: enemies in mind as well as in act,—and by the very nature of man, until the government, whatever it be, has given way to a representative democracy, perpetual and unchangeable enemies.

Not so the subject many, to the ruling and influential few: the enmity is not reciprocal: it is all of it on one side,—on that one side only.

The subject many, have neither expectation nor desire of oppressing or plundering the wealthy. Oppress them, they could not, without plundering them of all they have: for without any factitious power, their wealth cannot but protect them, and protect them most effectually against oppression in every shape.

Plunder the wealthy few, the subject many could not, by any general resumption and new division of property: for by any such attempt, everything valuable, and all property in it, would be destroyed: that of the poorest as well as that of the most wealthy.

As little could they in the way of taxation: taking this or that part instead of the whole. For between wealthy and not wealthy, there being no line of separation actual or practicable, the more rich could not be taxed without taxing the less rich likewise.

In the Anglo-American United States, the class who, with relation to the purpose in question, are without property—that is to say, without property sufficient for their maintenance—have, for upwards of fifty years, by means of the right of electing the possessors of the supreme operative power, had the property of the wealthy within the compass of their legal power: in what instance has any infringement of property ever been made?

The worst that could happen to the ruling and influential few from power, if vested in the hands of the many, or say rather, of all, themselves, the ruling few, included,—is to see themselves brought down to an equality with the many in all things, wealth excepted: in respect of power, to the having no more than an equal chance for power: in respect of factitious honour, to be divested of it, the many being at the same time unpossessed of it.

While the triumvirate of the wealthy, the powerful, and the factitiously dignified, reigns—injustice, to the prejudice of the greatest number, reigns in every part of the field of government: injustice for the benefit of those few, at the expense and to the burthening of the many. Suppose that portion of the aggregate mass of power which they are capable of holding—suppose the constitutive power—in the hands of the greatest number, what in respect of justice and injustice would be the consequence? Not the reverse of the present state of things: not injustice to the benefit of the many at the expense of the few, but justice to all alike.

Take England for example. By the factitious expenses imposed on judicial proceedings, nine-tenths of the population, to say the least, are excluded from the benefit of justice, as well in the situation of defendants as in that of plaintiffs: a line is thus drawn between the wealthy and the non-wealthy: the wealthy, all those who are capable of demanding the assistance of the judicial office, or resisting the demand when made by others; the non-wealthy those who are incapable: all those whose situation is below the line of separation, are at the

mercy of all those whose situation is above it. Now, suppose this factitious burthen completely removed, what would be the consequence? That the wealthy would be at the mercy of the non-wealthy? No; only that they would cease to see the many lying absolutely at their mercy: insomuch that the two parties would have to contend upon terms less unequal than at present. I say less unequal: for, as to absolute equality, this is what the very nature of the case completely forbids. For it is upon evidence that the fate of every cause depends, and evidence is not in any case to be had altogether without expense: and to the necessary amount of the expense, even when all factitious expense is struck off, no determinate limits can be assigned.

Section XI.

English Parliamentary Reform—its inadequacy.

In the opinion of a considerable and gradually increasing number of the people, the system of government as carried on in England, is so bad—so adverse to the greatest happiness of the greatest number, that a man desirous of contributing his endeavours to that same greatest happiness, cannot, without inconsistency, fail of being desirous of seeing brought about a change: a change of a nature to add to that greatest happiness, by substituting good to what is evil in the form of government, as it exists at present.

For this purpose two changes are continually brought to view: one under the name of Parliamentary Reform, the other under the name of Revolution. By Parliamentary Reform is meant a change in the mode in which the people are said to be represented: by causing the men who, under the name of representatives of the people, exercise a principal share of the powers of government, to be located and dislocable by the great body whom they are said to represent, instead of a comparatively minute portion of it. By Revolution is meant locating, in the situation of monarch, an individual different from him by whom it is at present filled.

Parliamentary Reform has been proposed in two modes:—one styled radical, the other styling itself, sometimes moderate—sometimes temperate.

By Radical Reform is meant the substituting to the House of Commons, as at present organized, a House of Commons organized upon the principle of a representative democracy, but leaving in full possession of their power the Monarch and the House of Lords.

By moderate reform is meant the taking the power of the House of Commons out of the hands of the present oligarchy, and placing it in a regular and equal sort of aristocracy, leaving monarch and lords in possession of their power, as in the former case.

If no good worth contending for—no permanent and adequate remedy to the existing evils could be brought about by radical reform, still less could it by moderate reform.

Note now the change that would be brought about by radical reform: supposing no other change effected than that which is expressed.

The king would remain. Therefore, so long as he retained his power no change would be effected that were adverse to his interests. But every change that would be beneficial to the interest of the people—contributing to the greatest happiness of the greatest number of them, would, it has been seen, be adverse to his interest. Therefore the king alone would suffice to prevent any considerable good from being done, any effectual remedy from being applied. Take in hand the whole catalogue of abuses. Look over it from beginning to end: not one is there in the continuance of which he has not an interest: not one of them is there which it would not be against his interest to part with: not one of them is there which, on any reasonable ground, he could be expected to part with, if he could help it.

The House of Lords would remain. But of all the members of that house there is not one who, so long as he is one, will not be a sharer in that sinister interest which, as has been seen, stands irremoveably attached to the situation of monarch. The House of Lords alone would, therefore, suffice to shut an everlasting door against all remedy.

But if for this purpose the king alone, by his single force, and also the House of Lords alone, by its single force, would either of them suffice, much less can they fail to suffice by their conjunct force.

Yes, it may be said, reform, if radical, will suffice: it will suffice without further change. Not in any shape, and in particular, not in this shape, can parliamentary reform have been brought about, unless and until both lords and king have been brought into acquiescence. But the use and only use of this reform, is to remove the existing abuses: in this one point is concentrated all that is looked to from it: the power sufficient to produce the cause will be sufficient to produce the effect.

No: it will not suffice. By the supposition, the office of king will remain: the power of the king will remain untouched; the power of the lords with their veto will remain untouched. But from the office of king, a quantity of the matter of wealth, all of it operating upon the representatives of the people in the character of matter of corruptive influence is inseparable: in a large proportion it will suffice to prevent the abolition of the mass of depredation and oppression at present established: and whatsoever it is not able to prevent the amendment or abolition of, it will suffice to bring back in a longer or shorter course of time. To produce this effect not so much as a single act, that can with propriety be called an act of corruption (it has been shown) is necessary: not so much as a single act, on either part.

To confirm the existence of the kingly office would be to sanction a principle opposite to the only justifiable end of government. It would be to continue in the hands of a functionary, the hostility of whose interest to the universal interest has been shown to be necessary and unchangeable, the power of giving effect to that same sinister interest.

You who propose the continuance of the state of things, by which the mischief has been done, by what means is it your expectation, that the good you propose should be effected? You who propose the accomplishment of an end, how is it that you can avoid the adoption of the means, the only means by which it can be effected? Parliamentary reform, or any reform you can make or think of, will it change man's nature? Finding in every official an appetite for power—as in dogs an appetite for bones, will the word *reform* extirpate it?

No such reform can be carried into effect, but by a power sufficient to go further, and abolish the office of him, with whose means of happiness, the greatest happiness of the greatest number is incompatible, and the power of that unelected assembly whose interest is not less at variance with the universal interest, than the particular and sinister interest of the monarch.

Leave the two offices untouched—you leave an injured king and an injured house of lords. You leave where you find him, a man enraged with the sense of that which in his view, is injury, and you leave him with the means of self-reinstatement and vengeance in his hands. Easier, much easier, is the whole of the work, than this same half. The whole is eminently simple: the half is eminently complicated.

Leave the half in existence, you leave unremoved all the moral pollution and all the intellectual absurdity which defiles it. The same system of shameless and indefatigable lying, and the same practical inferences which have been at all times deduced from them, will continue to be deduced. You cannot have a king, but you have in office a functionary who cannot do wrong; that is to say, who has, by the universal declaration of all who have at any time thus spoken of him, possessed and exercised the power of converting into right whatsoever wrong his sinister interest and vices ever prompt him to commit. You cannot continue the office in existence, without endeavouring to give perpetuity to, by far the foulest system of immorality, as well as the grossest system of absurdity that the wit of man ever engendered.

When on the part of kings and lords, acquiesence has in any way been produced, to leave them in possession of their power, would be to leave them with arms in their hands, in a condition to fight the matter over again. Very generous this indeed, but to whom? To the one and his few hundreds: to these hundreds, generous; but to the many millions, still more ungenerous.

The sources of waste and corruption have all been indicated and enumerated. Dry them up all, dry them up without exception: to all this vast mass of evil you may substitute the opposite and correspondent good, with a sacrifice comparatively inconsiderable of existing interests and expectations. Keep any one of these sources untouched, to produce the same retrenchment, you must make a sacrifice to the same amount elsewhere, at the expense of existing possessions and expectations.

On revolution, considered as a remedy against misrule, a syllable is almost too much. Suppose it effected, what good would be effected by it or with it? Suppose the present king removed, where should we find a better?

Revolution proposed in the character of a remedy, supposes the cause of the evil is in the individual. But it does not lie in the individual: it lies in the species: it lies in the nature of all man, not in the one man who is king.

As well might you think of doing away the mischief of the inquisition system, by removing one grand inquisitor and substituting another in his place.

Think not that, because the bringing the present system of corruption to the present degree of perfection has taken up 134 years, reckoning from the revolution, it would take up the same time to reproduce the quantity of evil, removed by a second revolution now. Small and inadequate would be the amount of saving or defalcation from the mass of abuse that could be effected by parliamentary reform alone during any such continuance. At the revolution, taking the requisite time for it, there existed the possibility of screwing up the amount of the depredation to eight hundred millions. But in addition to these eight hundred millions, could another eight hundred millions be added, in the same time, or in any time? Oh, no: all that stock has been expended.

CONSTITUTIONAL CODE.

BOOK II.

PREFACE

TO THE ORIGINAL EDITION OF BOOK II.

Of the three volumes of which the proposed constitutional code will consist, the first makes thus its appearance by itself, without waiting for the two others.* To their completion, however, very little is now wanting; they are, both of them, in such a state of forwardness, that, were the author to drop into his last sleep while occupied in the tracing of these lines, able hands are not wanting, from which the task of laying the work before the public would receive its completion.

Of the various concurrent causes of the retardation,—one has been—the desire of the author to attach to this first volume an introductory dissertation, having for its *subject-matter* the various forms of which the supreme authority in a state is susceptible; and for its *object*, by bringing to view the advantages and disadvantages of each, to exhibit their respective degrees of elgiibility; meaning always by eligibility, conduciveness to the maximum of the aggregate of happiness. Taking, for the source of distinction and partition, the relative numbers of the ruling and influential one or few, on the one part, and the subject-many on the other,—are therein brought to view—in the first place, the three simple forms of government—monarchy, aristocracy, and democracy; in the next place, the several compounds, actual and possible, capable of being formed by their admixture.

For this discussion, *matter*—in quantity adequate, or little short of it—has, this long time, been in existence: but, as to *form*, that which presented itself as the best adapted, has not yet been given to it.†

Under these circumstances, it seems to me, that for the chance of giving to the work, at a point of time not likely ever to arrive, the degree of supposed perfection, the phantasmagoric image of which has, like a *New Jerusalem*, been always in view,—good economy could not now advise the foregoing the advantage of making application of this same matter, to such measures as are already on the carpet, placed thereon by the authority of government itself On this consideration it is, that this first volume makes its appearance, without waiting for either of the two next.

The political communities, whose benefit this foremost part of my *all-comprehensive Code* (or say, in one word, of my *Pannomion*) has had principally in view—these communities have been for the time *present*, those, more particularly, which have grown out of the wreck of the Spanish monarchy (not to speak as yet of the Portuguese) in the American hemisphere. To time future—whether before the present generation has passed away, or not till a length of time after, and what length, I cannot take upon me to pronounce—was all along referred the applicability of the work to the use of the British empire.

In saying *the work*, I meant the whole of it, considered as a *whole:* for, as to *parts* of it, in no small quantity, if applicable to any one form of government, so are they to every other; and this, without any diminution of the proportions of power at present possessed by the several constituted authorities.

As to this part, and some others, of the fruits of my unremitted labours,—the cause of their thus meeting the public eye in an unmatured state, is this:—what occurs to me at this moment is—that, if so it be, that they afford any promise of being in any way or degree beneficial to mankind,—it behoves me to make the most of the short remainder of my life, for the purpose of causing them to be brought into the world under my own eye. On this consideration accordingly it is, that I have added to this volume a sort of skeleton of the contents of the two others, in the form of a table of the *titles*, of the chapters and their several sections.

Continuing the preference thus given to real usefulness over appearances, to this volume or a subsequent one, I have or shall have added similar skeletons, of such of the parts of my proposed Pannomion as regard what, in contradistinction to *international*, may be designated by the appellation of *internal* law. These are:—1. The *Right-conferring*, commonly called the *Civil*, code:—2. The *Wrong-repressing*, commonly called the *Penal*, Code: both belonging to what I call the *substantive* branch of law:—3. The *Procedure* Code, constituting what I call the *adjective* branch:‡ growing—the whole of it

* This first volume corresponds with Book II. chapter i. to ix. inclusive, of the present edition.—*Ed.*

† The first book of the present edition has been arranged from the matter which the author had so prepared.—*Ed.*

‡ See the Procedure Code at length, in vol. ii. —*Ed.*

together,—and in my view of the matter, without need of distinction,—out of those two sub-branches of the substantive branch.

To a student in the art of legislation, it might be a sort of pastime—taking in hand any one of these same skeletons, to guess all along what may be the composition of the flesh and blood—the muscular and vascular system, destined to be attached to it: as, from the protuberances in the cranium, *phrenologists* undertake to determine the moral and intellectual contents of the cerebrum and cerebellum:—a sort of puzzle, not calling for more labour than does a game of chess, and assuredly standing somewhat above it in the scale of usefulness.

STATE OF [ ].

ITS CONSTITUTIONAL CODE.*

CHAPTER I.

TERRITORY OF THIS STATE, NAME, SITUATION, BOUNDARIES, DIVISIONS.

Enactive.

ARTICLE 1. [ ] is the denomination of this state. Its constitution is that which stands expressed in this present Code.

Enactive.

ART. 2. The territory appertaining to it is as follows. [ ] ☞ Here insert its situation on the globe, in latitude and longitude, with a designation of its boundaries, natural and conventional.

Enactive.

ART. 3. The whole territory is divided into Districts. Each District is an Election District (as to which see Ch. vi. LEGISLATURE) sending one Deputy to serve as a member of the Legislature. Subject to alteration by the Legislature, by union or division of entire Districts, each District is moreover the territory of a Sub-legislature, as per Ch. xxix. SUB-LEGISLATURES. Also, subject, in like manner, to alteration, it is the territory of an Appellate Judicatory, as per Ch. xii. JUDICIARY, and Ch. xxii. APPELLATE JUDICATORIES. Of these Districts the denominations are as follows. ☞ Here insert the list.

Enactive.

ART. 4. Each District is divided into Subdistricts. Each Subdistrict is, as per Election Code, (see Ch. vi. LEGISLATURE section 4,) a *Vote receiving*, or say, *Voting District*. Each Voting District sends one Deputy to the Sub-legislature of the District. Subject to union and division, as above, each Subdistrict is the territory of an Immediate Judicatory, as per Ch. xii. JUDICIARY, and Ch. xiii. JUDGES IMMEDIATE. Of these Sub-districts, the denominations are as follows. ☞ Here insert the list.

Enactive.

ART. 5. Each Subdistrict is divided into Bis-subdistricts. Each Bis-subdistrict is the territory of a Local Headman, as to whom see Ch. xxv. In case of need,—for example, by change in populousness or condition in other respects,—Bis-subdistricts may come to be united or divided, as above. Of a Bis-subdistrict, if divided, the Sections will be Tris-subdistricts, and so on.

Enactive. Instructional.

ART. 6. In this scheme of territorial division, the Legislature will, at all times, make any such alteration as in its judgment the exigencies or convenience of the time shall have required. Of the Districts originally marked out, it will make any two or more into one: it will divide any one or more, each of them into two or more, reserving to each the name and attributes of a District. So likewise as to Subdistricts and Bis-subdistricts. But, seeing the complication and confusion that might ensue,—it will not, but in a case of urgency, at any of these three stages in the course of division, proceed upon any plan, which shall not be, as above, *commensurable* with the one originally employed.

INSTRUCTIONAL DISSERTATION.

The several portions of territory, for the denomination of which the above-mentioned appellations are respectively employed, are the supposed results of so many supposed sectional operations, having for their subject-matter the *entire* or *aggregate* of the dominions of the state in question, whatever it be,—distant dependencies not being taken into account: so many of these denominations, so many *grades* or *stages* in the process of division:—a process, the effect of which is to multiply the subject-matter of the division, by a number equal to that of the

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* [Constitutional Code.] Of the whole *Pannomion*, the first part in the order of importance, thence in the order of appearance, is this code: in the order of importance, because on the end herein declared, as per section 3, and the means here employed in the first instance for the attainment of it, will depend the several subordinate ends pursued, and the several correspondent sets of means, employed in all the several other codes. *Pannomion* is, in Greek, the *whole* body of the *laws*.

divisor employed. Thus, for simplicity of conception, suppose the same divisor 20 employed at each operation: divide the whole territory of the state by 20, you have 20 of the portions above denominated *Districts:* divide the districts each by 20, you have in each District 20 *Subdistricts;* in the whole territory, 400 Subdistricts: divide the Subdistricts each by 20, you have in each Subdistrict 20 Bis-subdistricts, in each District, 400 Bis-subdistricts; in the whole state, 8000 Bis-subdistricts: divide the Bis-subdistricts each by 20, you have in each Bis-subdistrict 20 *Tris-subdistricts;* in each Subdistrict 400 Tris-subdistricts; in each District 8000 Tris-subdistricts: in the whole state, 160,000 Tris-subdistricts.

For any such divisional operation, it appears not that any practical use can be assigned, other than that of its being employed in furnishing stations for functionaries; for functionaries of some sort or other, one or more, in the several sections of territory which, taken together, exhibit the result of it.

If, in any state, application be made of the principles of the present proposed Code, the number of the sectional operations performed, and thence of the *stages*, or say *grades*, of division produced and employed, as above, will naturally be influenced by the magnitude of the aggregate territory of such state, combined with that of the population. It will not, however, increase in any regular proportion: for, after a certain number of these grades or stages, every good effect contemplated by addition to the aggregate number, may be produced by augmenting the divisor, and thence the number of the sections of territory at one or more stages; thus avoiding the production of the bad effect, to wit, the *complication*, which would be the necessary result of every addition made to the number of these same stages.

On the above grounds, and others, which will appear presently, the number of stages represented by the denomination *Tris-subdistricts*, is the number here regarded as the greatest number, for which, in the most extensive state, there can be any use: while, on the other hand, as, for example, in a *Swiss Canton*, the smallness of the aggregate territory may have the effect of reducing the number of these stages or grades to *one*, or even rendering any such divisional operation, with its results, altogether needless.

In Ch. xxv. of this proposed Code, the existence is assumed of a demand for a public functionary in every portion of territory, which, according to the above explanation, comes under the denomination of *a Bis-subdistrict*—a portion of territory resulting from the division of the above-explained portion called *Subdistrict*, as that does from the division of the portion styled *a District*, as above explained: both of them susceptible of different denominations, according to the different purposes to which they are respectively made applicable. This same least portion of territory is the portion employed as the seat or station of a sort of functionary, who, in Ch. xxv., will be found designated by the appellation of a *Local Headman:* a functionary, of whose situation and proposed functions some conception, though very rough, and subject to great amendment, particularly in the way of addition, may be conveyed by the word *Maire*, in the sense in which it is universally employed in France; the word *Mayor*, in the sense in which it is in some instances employed in England; and the word *Alcalde*, in the sense in which it is employed in Spain, and the dominions still or of late belonging to Spain, in America, and elsewhere.

A further, though tacitly made assumption, is—that in each territory belonging to an *Immediate* Judicatory, (so called in contradistinction to an *Appellate* Judicatory,) there will be a demand for *Local Headmen*, (number indetermined, because on the present occasion impossible to be determined,) each with his appropriate territory—constituting his *local field of service.*

A state of things, which might perhaps come to be found exemplified, is—that, in which, in the instance of this or that territory of an Immediate Judicatory, territory and population considered together, the extent might be so small, that a single *Local Headman's* station, having for its limits the same as those of the territory of the judicatory, would be found sufficient. But, by this circumstance, no demand would be produced for any change, in the arrangement, here grounded on the supposition of an indefinite number of *Local Headmen's territories*, included in every *Immediate Judge's territory.*

Of a demand for a sort of territory of a still inferior grade—of a sort of territory which would come under the denomination of a *Tris-subdistrict*, the notion may naturally enough be presented in English by the word *parish;* in the several other European languages, by the several words derived in those languages respectively from the same root: that is to say, the Greek word, which signifies a cluster of neighbouring habitations, and which, in Latin characters is expressed by the word paroecia, or in Greek παροικία. But, supposing the existence of a peremptory demand for a class of territories, of a grade so low as the one expressed by this same word *Tris-subdistrict*,—no sufficient reason will, it is believed, be found for the allotment of anything more than an extremely limited *logical* field of action to the corresponding functionary: no reason for any such field of action, comparable in extent to that which will here be seen allotted to the *Local Headman* in his territory.

Only, as above observed, for simplicity of conception,—has the same division, to wit, twenty, been assumed, on the instance of every stage or grade brought to view. In practice, the diversities incident to magnitude of territory and population considered, together with

the ever-variable magnitude of population in each territory,—whatsoever be the state in question, divisions of very different magnitudes, in the several grades or stages compared with one another, will be found requisite; and, by means of all these diversities taken together, the same number of stages or grades will be found applicable to different states, the aggregate portions of which are of the most widely differing magnitudes.

What is plain is—that to no state whatsoever can application be made of this Code, without its finding such state already subjected to some all-comprehensive scheme or other of territorial division, as above explained. But, by no such existing scheme will any naturally insuperable impediment be opposed to the scheme here proposed, in so far as, by the adoption of it, a promise may be thought to be afforded, of any specific and assignable advantageous effects. By separation or aggregation, or both together, the existing portions of territorial divisions, whatsoever they may be, and howsoever denominated, may be made applicable to all the several purposes which will here be seen proposed: and thus may they be made the seats of functionaries, invested with the functions herein respectively defined.

As to the *names* herein given to the results of the several successive divisional operations, some conception of the peculiar use of them can scarcely fail to have presented itself to view. For, thus it is that the order, of which the numeration-table gives the expression, may be given to any scheme of division established or proposed, which otherwise, by the total want of all indication of the relation between one elementary part and another—in a word, by the perfect *arbitrariness* of the import of every denomination employed, must impose so heavy and needless a task on the conception and memory of every person, to whose cognizance it comes to be presented.*

To the forming of an adequate idea of the disadvantages attendant on the existing system of denomination for this class of objects, and thence of the advantage producible by the adoption of the here proposed one,—it would be necessary to look over the list of them, as they stand exemplified in some one or more political state: and that of the British dominions, compared and contrasted with those of France, will perhaps be deemed sufficient. In the case of France, as regenerated by the Revolution, simplicity and uniformity will be found observable; natural expressiveness, not: in the case of England, Scotland, and Ireland, natural expressiveness equally wanting; and, instead of simplicity and uniformity, a chaos.†

In France, the whole kingdom, distant dependencies out of the question, is divided into *departements;* each department, into *arrondissements;* each *arrondissement*, into *Cantons* each *Canton*, into *communes*. Of *paroisses*, (in English, *parishes*,) no mention is made.

In the here proposed plan of nomenclature, they would be thus denominated:

1. Departements—districts.
2. Arrondissements—subdistricts.
3. Cantons—bis-subdistricts.
4. Communes—tris-subdistricts.

From the example of England, no instruction,—equivalent to the time, space, and labour requisite for the extraction and communication of it,—could be obtained: so great the diversification, so thick the complication and confusion, in which it is involved. If a *county* be taken as corresponding to *district*, the number of grades of division is, in some counties, different from what it is in others: and, in two counties in which the number of these stages is the same, the denominations given to the results, are different. See Mr Rickman's highly instructive preface, prefixed to the Population Returns made to the English House of Commons, and printed.

For different purposes, two schemes of division have place:—the one, called *civil* or *temporal*, instituted for the purpose of security against adversaries, internal and external; the other, called *ecclesiastical* or *spiritual*, instituted in a dark age by a foreign potentate—foreign with reference to the British Isles—for the purpose of extracting money, on pretence of saving souls.

On the *temporal* plan, the result of the division, made in the ultimate grade, is called a *township*, *village*, or *hamlet:* in the spiritual, a *parish;* in some instances, the two results are coincident; in others, not. For a multitude of important purposes, in particular for *taxation* and *registration*, the *spiritual* plan has, in the case of this ultimate result, been adopted into the *temporal;* and by this adoption, vast and various is the confusion and mischief that

* In this scheme may be seen exhibited a portion of universal language applicable to the subject with equal advantage and facility to the several different languages of all civilized nations: the language of the numeration table being alike needed by all, and accordingly alike employed by all: and thus far the language of each may be understood by the natives of every other, and to incomparably greater perfection than at present the language of any one is understood by the natives of that one.

† If, in the present instance, this same principle of denomination is, in its nature, applicable with more or less advantage, so it will, it is believed, be found to be in a great variety of other instances: if to any natural and material whole, so to any ideal or other factitious aggregate—say, for example, to any of those aggregates which form the subject-matter of natural history: and in particular, if classed by divisional operations, performed in the dichotomous mode, as exhibited table-wise in Dr Dumeril's admirable French work on Zoology. But, ere it had proceeded far, this mode of designation would probably be found too unwieldy for use, at any rate unless figures could be substitutes for words.

has been produced. See Ch. xxvi. Local Registrars.

In a political state, the territory of which, (distant dependencies out of the question,) were not much different from that of France, England, Scotland, or even Ireland,—the result of the ultimate sectional operation might, perhaps, be of a magnitude between that of the French *arrondissement*, and that of the French *commune*. With a view to the present purpose, all these integers of territory are put upon a level: for, great as is the difference between the largest of them and the smallest —between France and Scotland—still, it is not (it is believed) so great, as not to be capable of being made up for, by a difference in number; that is to say, by giving, to a country resembling France in magnitude, a greater number—to a country resembling Scotland, a lesser number, of these same *atoms* of territory, if such they may be called: for *atom* is from the correspondent Greek word, which means that which is not susceptible of ulterior division, or at least has not been subjected to it.

Note here as to economy, and the effect produced in relation to it, by the number of grades of territorial divisions. On one account, the greater this number, the greater the aggregate mass of expense: on another account, the greater this same number, the less the mass of expense. The circumstance by which the increase is effected in the expense is this—that, by each grade of divisional operation, are produced a set of sub-territories, each of them with a set of officers and official residences to be provided for. The circumstance by which diminution is effected in the expense is—that in proportion to the increase in the number of those same sets of officers, and official residences, is the diminution in the magnitude of each such sub-territory: and thence, (supposing them rendered as equal as may be in magnitude,) the less is their magnitude, and the less the journeys which those inhabitants whose habitations are at the greatest distance from the seat of business—the official residence—will have to make in passing to and from it, with the intervening demurrage. Too apt to be overlooked, but not the less real and important, is this latter *item* of expense. In the case of the vast majority, expense in time is expense in money. The expense in officers' pay and official residences is borne proportionably by the opulent few and the unopulent many: the expense in time employed, as above, in journeys, is borne almost exclusively by the unopulent many: by those to whom their time affords no profit, no loss is sustained from the unprofitable expenditure of it.

CHAPTER II.

ENDS AND MEANS.

Enactive. Instructional.

Art. 1. Of this constitution, the all-comprehensive object, or end in view, is, from first to last, the greatest happiness of the greatest number; namely, of the individuals, of whom, the political community, or state, of which it is the constitution, is composed; strict regard being all along had to what is due to every other—as to which, see Ch. vii. Legislator's Inaugural Declaration.

Correspondent fundamental principle: the *greatest happiness principle.*

Correspondent all-comprehensive and all-directing rule—*Maximize happiness.*

Enactive. Instructional.

Art. 2. Means employed, two—aptitude maximized: expense minimized.

Correspondent principles—1. The official-aptitude-maximization principle. 2. The expense-minimization principle.

Correspondent rules. Rule 1. Maximize appropriate official aptitude.

Rule 2. Minimize official expense.

For the manner in which these rules second one another, see Ch. ix. Ministers collectively. Section 15, *Remuneration.* Section 16, *Locable who.* Section 17, *Located how.*

Expositive.

Art. 3. Included in the matter of *expenditure* is the matter of *punishment*, as well as the matter of *reward.*

Expositive.

Art. 4. The matter of punishment is evil applied to a particular purpose.

Expositive.

Art. 5. The matter of evil is composed of pain and loss of pleasure.

Expositive.

Art. 6. The matter of reward is the matter of good applied to a particular purpose.

Expositive.

Art. 7. The matter of good is composed of pleasure and exemption from pain.

Enactive. Instructional.

Art. 8. Consistently with the *greatest happiness principle*, evil cannot be employed otherwise than as a *means:* as a means of producing, in the character of punishment, or otherwise, more than equivalent pleasure, or excluding more than equivalent pain, or producing the one, as well as excluding the other.

Enactive. Instructional.

Art. 9. Employed in the character of punishment, it cannot, according to the greatest happiness principle, be employed otherwise than as an *instrument of coercion:* coercion, by *fear* of future punishment in case of future delinquency: coercion, for the production, as above, of more than equivalent good.

Instructional.

ART. 10. According to this same principle, pleasure is at once *an end* and *a means:* as *an end*, aimed at on every occasion: as *a means*, employed on particular occasions, to wit, when the matter of it is employed as a matter of reward.

Enactive. Instructional.

ART. 11. Employed as the matter of *reward*, the matter of *good* cannot, according to the greatest happiness principle, be employed otherwise than as *an instrument of inducement.*

Instructional.

ART. 12. Of the matter of reward necessary to be employed as an instrument, or say a means, of *government*, it is but in small proportion that it can be obtained, otherwise than by the help of *evil* employed in the way of punishment, and otherways as a means: witness, taxation: hence, under the greatest happiness principle, the necessity of minimizing expenditure, in the case of reward, as well as in the case of punishment.

Instructional.

ART. 13. To render the conduct of *rulers* conducive to the maximization of happiness, it is not less necessary to employ, in their case, the instrument of *coercion*, than in the case of *rulees*. But, the instrument of *coercion* being composed of the matter of *evil*, and the instrument of *inducement* of the matter of *good* —rulers are by the unalterable constitution of human nature, disposed to maximize the application of the matter of good to *themselves*, of the matter of evil to *rulees*.

Instructional.

ART. 14. Appropriate aptitude may be considered as having place in the case of *rulees*, as well as in the case of *rulers:* in both cases, according to the greatest happiness principle, it is aptitude for the maximization of happiness. But, in the case of *rulers*, it has a more particular signification: it is aptitude for the maximization of happiness in a particular way; namely, by a system of operations performed on *rulees*.

Expositive.

ART. 15. Of appropriate official aptitude, *elements*, or say, *branches*, three—moral intellectual, and active; of intellectual, again, two —cognitional and judicial: knowledge and judgment.

Ratiocinative. Enactive. Instructional.

ART. 16. Rules for maximization of appropriate moral aptitude.

Rule I. The sovereign power give to those, whose interest it is that happiness be maximized.

Rule II. Of the possessors of subordinate power, maximize the responsibility—namely, as towards the aforesaid possessors of the sovereign power.

Note that, only by expectation of eventual *evil* (*punishment* included) can responsibility be established: neither by *expectation* of *eventual* good, nor by the *possession* of *good* (*reward* included) can it be established.*

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* [*Responsibility.*] Partly with, partly without design, the ideas, attached to the word *responsibility*, and its conjugate *responsible*, have come to us enveloped in a thick cloud: and from this cloud has flowed, it will soon be seen, practical evil—evil in the shape of waste, depredation, and corruption, covering the whole field of government. In a word, by it has been promoted, and in no small degree, the success of those designs, by which, instead of being, as it ought to be, *minimized*, official expense has, under so many governments, though under no other in so high a degree as under the English, been *maximized*. The time for the employment of this important word having here arrived, the operation of clearing it from the delusion of which it has been made the instrument, could not any longer be delayed.

The laws being, by the supposition, apt—(for on no other supposition can they be either made or continued)—the object of the legislator must, on every occasion, be—to maximize compliance with them: to maximize it on the part of all *persons*, and in particular, as on the present occasion, on the part of all *functionaries*. To maximize *compliance* with the laws, is, in other words, to maximize the *execution* and *effect* given to them. But, at the hands of no person, can any such execution and effect be depended upon, except in so far as, to this purpose the quality called *responsibility* has on his part place: responsibility, and *that* responsibility *effective*.

For the creation and preservation of this effective responsibility, punishment, it will be seen,—*punishment* (by means of the *fear* of it) is the only instrument which, as in other, so in official situations, can be employed. For engaging a man to take upon himself the obligations attached to the situation, *reward*, in some shape or other, is indeed an instrument, and, generally speaking, the only apt instrument that can be employed: but, to the purpose of ensuring the regular and apt fulfilment of those same obligations, punishment is the only instrument which, the nature of man being such as it is, can be made applicable with effect.

Say then for shortness,

1. For constituting effective responsibility, punitional responsibility is indispensable.

2. By reward—by remuneration—no effective responsibility can be constituted. *Remuneratory responsibility* may be spoken of, but can neither be realized, nor so much as conceived.

Give a man the matter of reward, and afterwards, in case of misconduct on his part, take it away again, thus, it is true, may responsibility, and in a proportionable degree, be effected. But it is by the taking it away, not by the giving it, that the effect is produced: and the taking it away is not reward but punishment. Suppose money taken from him, the same quantity of money would have had the same effect on him, had he had it from any other quarter under any other name, instead of having it from the legislator, under the name of *reward*.

Ratiocinative. Enactive. Instructional.

Art. 17. For official aptitude, cognitional, judicial, and active, joined to minimization of expense, principles employed are three.

To functionaries, however, as to other persons, reward is more acceptable than punishment. Accordingly, while, for the establishment of this same effective responsibility, they have, in the instance of *other* persons, employed *punishment*, and that in no small abundance,—with correspondent abundance, for the production of the same desirable effect, in their *own* instance they have everywhere employed *reward*. With this instrument thus employed, not only have they represented themselves as having, in their own instance, established *responsibility*—responsibility under that very name, and that responsibility *effective*—but the degree of its efficiency they have represented as rising in exact proportion to the quantity of the acceptable matter thus employed. In no imaginable shape have they omitted thus to employ it: but the matter of opulence being the only sort of acceptable matter capable of being applied, on every occasion and to every person, let *pecuniary*, or, the degree considered, let *opulential*, be the name of the sort of *responsibility* thus professed to be established.

Seldom has profession been more hollow. The pretended species of responsibility thus described—it is not in the nature of it to be *effective*.

Not that for the speaking of it as such, a pretence is wanting; a pretence—nor that an unplausible one: a pretence not only for the employing of this acceptable matter, but for maximizing it: for maximizing it in quantity and value—maximizing it in all imaginable shapes—pretence is always ready at hand. That where punishment is employed, its degree of certainty being given, the efficiency of it—to wit, to the purpose of effective responsibility—will be as its magnitude, cannot but be admitted. Well then (says the distributer of good things) if this is true of *punishment*, is it not so of *reward*? Answer. Not it indeed. When, towards the production of effective responsibility, anything is done by means of the matter of reward, it is not by rewarding that the effect is produced, but by punishing:—not by anything that has been given to a man, but by that, whatever it be, which is taken from him; and, as to his having on a former occasion received it under the name of reward, *that*, as above shown, makes not, to this purpose, any the smallest difference.

True it is—the more you give to a man the more there is that, upon occasion, you can take from him again; provided always that, at the time in question, you find him in possession of it, and that you can manage so as to get at it. But, whether to effective responsibility any very advantageous addition can be made by giving a man money for no more than a chance, more or less considerable, of being able to get that same money, or a part of it, back again from him,—may be left to be imagined.

By no quantity of the matter of reward, be it ever so great, can any the smallest addition be ever made to the degree of effective responsibility producible without it—producible by punishment alone. By punishment without reward, you can make a man suffer as much pain as man's nature is capable of suffering; and, by all the matter of reward you can give him or take from him, you cannot make him suffer any more.

Principle I. Probation, or say public-examination principle.

Principle II. Pecuniary-competition principle.

Principle III. Responsible-location principle—location of subordinate by effectually responsible superordinate.

Inseparable is the connexion between all three principles. See Ch. ix. Ministers collectively. Section 15, *Remuneration*. Section 16, *Locable who*. Section 17, *Located how*. Ch. xii. Judiciary. Section 28, *Locable who*.

Enactive. Instructional.

Art. 18. For the functions exercised by the several functionaries, in the exercise of their several powers, and the fulfilment of their respective trusts, see the indication given in the chapters headed by the denomination of the several classes of functionaries: as per table of chapters and sections hereunto annexed.

Enactive. Instructional.

Art. 19. In relation to every official situation, a recapitulatory indication will be found given, of the securities herein provided for the maximization of appropriate aptitude, in all its above-mentioned branches, on the part of the functionary, by whom it is filled. See, in the several chapters, the several sections entituled *Securities for appropriate aptitude*.

Expositive.

Art. 20. Considered in respect of its immediate *effects*, responsibility is distinguishable into *punitional*, *satisfactional*, and *dislocational*; in respect of its *source*, into *legal* and *moral*,—legal, produced by the *legal sanction*; moral, by the *moral sanction*, as applied by the public-opinion tribunal, as per Ch. v. Constitutive. Section 4, *Public-Opinion Tribunal—its Composition*. Of the satisfactional mode, the only generally applicable submode is the

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What is more—by the pretended responsibility produced by the gift of money—effective responsibility, so far from being increased, is, as has been seen, diminished; diminished, and *that* in a degree proportionate to the opulence produced by the money.

The short reason is—that as the opulence increases, the value and efficiency of any quantity of punishment professed, or even endeavoured, to be employed in the production of punitional responsibility, is diminished: diminished, because, as opulence increases, so does the facilities of obtaining accessaries before and after the fact—of obtaining accomplices and supporters.

As in the shape of *opulence*, thus is it with the matter of reward in all its several other shapes: *power*, *factitious dignity*, *reputation*, *ease* in so far as compatible with the enjoyment of power—in an official situation, ease at the expense of duty, and *vengeance* at the expense of justice. The more in all these shapes taken together a man has of it, the more is his effective responsibility—his responsibility to the effect of his being made to suffer in proportion to his misconduct, diminished.

pecuniarily-compensational—say, for shortness, the *compensational*.

Instructional.

ART. 21. *Compensational responsibility* has the effect of *punitional*, in the ratio of the sum parted with, to the remainder left. By it, wounds inflicted by the wrong are curable: it is on this account, preferable, as far as it goes, to simply *punitional*, by which, though employed for the hope of preventing greater future evil, pain is the only effect produced with certainty.

Expositive. Instructional.

ART. 22. *Legal* responsibility is distinguishable into *judicial* and *administrational*: judicial, where, in the shape of punishment, the effect is produced by the judicial authority, on the ground of *moral inaptitude*; administrational, where, by superordinate authority, dislocation is applied on the ground of inaptitude, *intellectual* or *active*, pure of moral. By dislocational, evil from the like inaptitude on the part of the dislocatee is prevented with certainty; of punishment, except in the singular case of physically disabilitative punishment in the instance of the individual offender, the preventive effect is clouded in uncertainty.

Instructional.

ART. 23. To pecuniary compensation, pecuniary *responsibility* to a corresponding extent is necessary. But, beyond that extent, in proportion to its extent, obstruction is afforded by it to its own efficiency, as well as to that of *punitional* and *dislocational*. In other words, up to the amount of his debts, a man's responsibility to the purpose of his being made to afford compensation in a pecuniary shape is, indeed, in the direct ratio of his opulence; but, when a man's opulence exceeds the amount of his debts, this effective responsibility is rather in the *inverse* than in the *direct* ratio of it: this, even under a system, legislative and judicial, which has for its end the maximization of the happiness of the maximum number; much more, under a system by which, to the happiness of the ruling one, in conjunction with that of the ruling and otherwise influential few, that of the subject-many, is, in intention and effect, constantly sacrificed. In the monarch, in whose situation opulential responsibility is maximized, effective responsibility, punitional, satisfactional, and dislocational, is *nihilized*.

Instructional.

ART. 24. As to moral responsibility, imperfect as it is, this species of security against misconduct is the more necessary to be brought to view, inasmuch as, in monarchies in general, were it not for this, there would be no responsibility at all: and, in other words, the monarch would be altogether without motives for compliance with the laws, even with those of his own making, which are, at all times, all such as, and no other than such as it is agreeable to him to make. It is by this source of restraint alone that the English form of government—a mixture, composed of monarchico-aristocratical despotism, with a spice of anarchy—has been preserved from passing through the condition of France, Russia, and Austria, into that of Spain and Portugal. Even without the assistance of a posse of his own creatures, acting under the name of a parliament, he may kill any person he pleases, violate any woman he pleases; take to himself or destroy anything he pleases. Every person who resists him, while in any such way occupied, is, by law, killable, and every person who so much as tells of it, is punishable. Yet, without the form of an act of parliament, he does nothing of all this. Why? Because, by the power of the Public-Opinion Tribunal, though he could not be either punished or effectually resisted, he might be and would be, more or less annoyed.

CHAPTER III.

SOVEREIGNTY, IN WHOM.*

Enactive.

ART. 1. The sovereignty is in *the people*. It is reserved by and to them. It is exercised by the exercise of the Constitutive authority, as per Ch. iv.

CHAPTER IV.

AUTHORITIES.

Enactive.

ART. 1. The Authorities which have place in this State are these:—

1. The Constitutive.
2. The Legislative.
3. The Administrative.
4. The Judiciary.

Their relations to one another are as follows:—

Enactive.

ART. 2. To the Constitutive Authority, it belongs, amongst other things, to depute and *locate*, as per Ch. vi. LEGISLATURE, the members composing the Legislative; and eventually, as per Ch. v. CONSTITUTIVE, Section 2, 3, to dislocate them: but not to give direction, either *individual* or *specific*, to their measures, nor therefore to *reward* or *punish* them, except in so far as *relocation* may operate as reward, and *dislocation* as punishment; or, in so far as, at the instance of the Constitutive, punishment may come to be eventually applied to them by the hands of succeeding Legislatures, as per Ch. v.

* See above, p. 96.

Constitutive. Section 2, 3, Ch. vi. Legislature. Section 28, *Legislation penal judicatory.*

Enactive.

Art. 3. To the *Legislative* it belongs, amongst other things, to *locate* the *Chiefs* of the two other departments; and eventually to dislocate them: to give—not general only, but upon occasion, *individual direction* to their conduct, as well as to that of all the several functionaries respectively *subordinate* to them: eventually also to punish them, in case of non-compliance with its directions.

Enactive.

Art. 4. To the *Administrative* it belongs, amongst other things, to give execution and effect to the ordinances of the Legislative in so far as regards the persons and things placed under its special direction, by the Legislative: to wit, in so far as litis-contestation has not place.

Enactive.

Art. 5. To the *Judiciary* it belongs, amongst other things, to give execution and effect to the ordinances of the Legislative, in so far as litis-contestation has place: to wit, either as to the question of *law*, or as to the question of *fact*.

Enactive. Expositive.

Art. 6. Taken together, the *Legislative* and the *Administrative* compose the *Government;* the *Administrative* and the *Judiciary*, the *Executive;* the *Legislative* and the *Executive*, what may be termed the *Operative*, as contradistinguished from the *Constitutive*.

Expositive.

Art. 7. Note, as to the word *supreme*. If attached anywhere to the name of any authority,—to no other authority than those in the same department, can it be understood to bear reference. Thus may be spoken of a *Supreme Administrative*, and a *Supreme Judiciary;* although, with reference to Supreme Legislature, they are both of them subordinate, as is the Legislative itself to the Constitutive.

Enactive.

Art. 8. So many of these supreme *authorities*, the Constitutive included, which is supreme over all the others, so many *Departments:* to each *authority*, a *department*.

Enactive.

Art. 9. The Legislature has under it as many *Sub-legislatures*, as in the territory of the state here are *Districts:* to each District a Sub-legislature.

Enactive.

Art. 10. Within the Administrative Department are *Sub-departments*, thirteen in number. For their appellations see Ch. ix. Section 2.

Enactive. Instructional.

Art. 11. In the case of the Legislative Department, the source of distinction and division is, as will be seen, furnished partly by the *local*, partly by the *logical*, field of service: in the case of the Supreme Legislature, both fields being without limit; in the case of the Sub-legislatures, both of them limited, as per Ch. xxix. Sub-legislatures: in the case of the Administrative Department, this same source is furnished by the *logical* field alone: as for instance, *Election, Legislation, Army*, &c., as per Ch. xi. Ministers severally: in each of the Sub-departments, so denominated, the authority of the head functionary extends over the whole territory of the state.

Enactive. Expositive.

Art. 12. In the Legislative Department and Sub-departments, the official situation is necessarily *many-seated:* the power, accordingly, *fractionized:* in the Legislature, *seats* as many as in the territory there are districts: in each Sub-legislature, seats as many as in the District there are Sub-districts.

Enactive.

Art. 13. In both the other Departments, the official situation is in every instance *single-seated*. Prime Minister, one; for each Administrative Sub-department, or union of Sub-departments, Minister, one. In each Immediate and each Appellate Judicatory, Judge, but one. Over all these Judicatories, Justice Minister, one. In each District, immediately under its Sub-legislature, Sub-prime Minister, one. In each Sub-department of the District, under the Sub-legislature and the Sub-prime Minister, Minister, one. In each ultimate section of the territory of the state, Headman, one.

Enactive. Ratiocinative.

Art. 14. In each of these situations,—with and under each principal functionary, serve as many auxiliaries as he finds it necessary to depute: as to which, in the several chapters headed by the names of the several functionaries, see the section intituled *Self-suppletive function*. Thus, at all times, whatsoever be the quantity of business to be done, there are hands for it in sufficient number without need of retardation; and thus is promptitude maximized. Nor yet is any door thus opened to abuse. For, for no such effect are adequate causes—adequate motives—to be found. For the conduct of these his instruments, the principal is effectually *responsible:* and thus, in their instance, (remuneration having place in no other shape than that of power in possession,—with the power, dignity, and pay, of their respective principals, in expectancy only,) frugality is not, by the establishment of those suppletive situations, or any of them, diminished.

CHAPTER V.

CONSTITUTIVE AUTHORITY.*

SECTION I.

Constitutive what—in whom.

Expositive.

ART. 1. The constitutive authority is that, by which at all times the holders of the several other authorities in this state, are what they are: by it, immediately or interventionally, they have been in such their situations located, and therefrom are eventually dislocable.

Enactive.

ART. 2. The Constitutive authority is in the whole body of Electors belonging to this state: that is to say, in the whole body of the inhabitants, who, on the several days respectively appointed for the several Elections, and the operations thereunto preparatory, are resident on the territory of the state, deduction made of certain classes. Mode of exercise, as per Election Code: as to which, see Ch. vi. LEGISLATURE. Section 4 to 13.

Enactive.

ART. 3. Classes thus deducted, are—1. Females; 2. Males, non-adult: that is to say, who have not attained the age of [21] years. 3. Non-readers: that is to say, those who have not, as per Ch. vi. LEGISLATURE, section 5, *Electors who*, by reading, given proof of appropriate aptitude. 4. Passengers.

SECTION II.

Powers.

Enactive.

ART. 1. Subordinate to the Constitutive authority, as per section 1, are all other authorities, and thereby all other public functionaries belonging to the state.

Those whom it cannot dislocate in an immediate, it can in an unimmediate or say interventional way; to wit, by dislocating those who, having the power, have failed to dislocate them, in conformity to its sufficiently understood desire.

Enactive. Expositive.

ART. 2. Exercisible by the Constitutive, in relation to them respectively, are the several functions following, with the power therein essentially included. These are—

I. *Locative function:* exercised by locating, in the official situation in question, the individual in question.

II. *Dislocative function:* exercised by dislocating, out of the situation in question, the functionary therein located.

III. *Punifactive function:* exercised by putting, at the time of dislocation, in a way to be punished, but by a different authority, the functionary so dislocated.

Enactive.

ART. 3. I. *Locative function.* Functionaries, in relation to whom this function is exercised by the members of the Constitutive authority, are as follows—

I. Their *Deputies*, deputed by them to the legislature, to act as Members of the Supreme Legislature, styled collectively *the Legislature.* In relation to all these, this power is exercised by the members of the whole Constitutive body, as divided into the bodies belonging to the several Election Districts; in each District, the Members of the Constitutive electing for that District a member of the Legislature.*

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* See p. 95, *et seq.*

* *Ratiocinative*, or say *Rationale.*

[*Deputy.*] Question. Why *Deputy* rather than *Representative?*

Answer. Reason 1. Because by the word *Deputy*, a plain matter of fact is indicated, and *that* the appropriate one.

2. Because the word *Representative* is less apposite, and not exclusively characteristic. In the concerns of individuals, for example, in the field of private right, many are the cases in which it is necessary that one person should act on behalf of another, without having been appointed by him for that purpose: witness Guardians of Orphans, Administrators of the property of Intestates, and the like.

3. Under favour of this ambiguous and indeterminate use of the word *Representative* in preference to *Deputy*, it is—that, in the case of the English form of Government, the fictitious and fallacious security for the people against the Monarch and the Aristocracy, has been imposed upon the people, in the character of a real one. To the Members who, in effect, are located,—some by the located and at pleasure dislocable instruments of the Monarch, others by individuals possessing an interest opposite to theirs, the appellation of *Representative* is habitually applied:—applied, and by many whom shame might deter from styling them *Deputies*—Deputies of the people, belonging to the Districts for which they respectively sit. Styled *Deputies*, they would be immediately recognised as Impostors; obtainers of a share in supreme power on false pretences.

Styled as they are *Representatives*, the colours of imposture are not altogether so glaring upon the face of this their common name: and, as to their being *Members*, Members of the body in question, it is a truth but too incontrovertible: as such, they are admitted to act, nor would any others be admitted in their places: anything of course they would rather style themselves, than what to the knowledge of everybody they are not, to wit, *Deputies.*

Question 2. Why, rather than *Depute?* Answer. By the word *Depute*, the matter of fact would indeed be expressed; and in a manner equally *apposite:* not, however, in a manner equally, because not exclusively, *appropriate.* Of the word *Depute*, continual need, as will be seen, has place, for the designation of functionaries in little less than all the several subordinate grades: of functionaries—located, each of them, by no more than a single principal, and with functions wanting little of being altogether identical with his.

Enactive.

Art. 4. II. The members of the several Sub-Legislatures. In relation to each sub-legislative body, this power is exercised by the members of the Constitutive body, belonging to its District, as divided into the bodies belonging to the several Subdistricts therein contained; the body belonging to each such Subdistrict electing a member of the Sub-legislature.

Enactive.

Art. 5. II. *Dislocative function.* Functionaries, in relation to whom this function may upon occasion be exercised, are the following:

1. The several Members of the Legislature.
2. The Prime Minister.
3. The several Ministers belonging to the Administrative Department: as per Ch. ix. Section 2.
4. The Justice Minister.
5. In each Judicatory, Appellate as well as Immediate, the Judge and the several other Magisterial functionaries, as per Ch. xii. Judiciary collectively. Section 3, *Judiciary functionaries.*
6. In every such situation, as above, every Depute.
7. The several Local Headmen and Local Registrars.
8. The several Members of the several Sub-legislative bodies.

Enactive.

Art. 6. Exercisible, upon occasion, in like manner, by the Constitutive authority belonging to each District, is the dislocative function, in relation to the several functionaries following—

1. The several Members of the Legislative body belonging to that same District.
2. The several District *Prime Ministers*, or say *Premiers*, serving under the several Sub-legislatures.
3. The several District Ministers, serving under the several Sub-legislatures and their several District Prime Ministers.

The Deputy of the Prime Minister will thus be seen to be styled the *Prime Minister Depute:* the Depute of a Minister, the *Minister Depute.* The Election Minister, for example, the *Election Minister Depute:* and so on in the case of the *Justice Minister* and the several Judges, and other judiciary functionaries.

In all these instances, the word *Depute* is in the adjective form: as in the case of the functionary, who, in Scottish Law, is styled *Sheriff-Depute.*

To no functionary other than those deputed by the Electors of the Election Districts to the Legislature, and of the Election Subdistricts to the several Sub-legislatures,—is the term *Deputy*, in the substantive form, applied in this Code: and, by this means, the idea of the highest sort of functionary, styled a *Deputy*, and that of the subordinate sort of functionary styled a *Depute*, are preserved from being confounded.

Section III.

Powers exercised, how.

Enactive.

Art. 1. I. *Locative function.* Exercised, in relation to the several members of the Legislative body, is the locative function of the Constitutive, in the several Election Districts and Subdistricts, in the Election Code, as per Ch. vi. Legislature, Section 4 to 13.

Enactive.

Art. 2. Exercised is this same function, in relation to the several members of the several Sub-legislative bodies,—in the same manner as there delineated, with reference to the several members of the Legislature.

Enactive. Instructional.

Art. 3. In each Subdistrict, immediately after he has voted for a Deputy to act as a member of the Legislature for the District, each member of the Constitutive body will, at the same place, and in the same manner, vote for another Deputy to act as a member of the Sub-legislature of that same District. The arrangements of detail,—necessary to adapt, upon the same principles, the mode of ascertaining the election of a member of the Legislature, to the case of a member of a Sub-legislature,—are, upon the face of the Election Code, obvious: they will be settled *in terminis* by the Legislature.

Enactive.

Art. 4. II. *Dislocative function*, 1.—How exercised by the entire Constitutive.

On the receipt of a requisition, signed by (one fourth?) of the whole number of the Electors of any Election District, requiring the dislocation of any functionary in section 2, *Powers*, Art. 5, the hereinafter-mentioned Election Minister will appoint a day or days, as near as may be, —on which, in the several Districts, the Electors shall meet at the several Voting Offices of the several Subdistricts therein respectively contained, in the same manner as on the occasion of an Election. The Voting Cards of those who are *for* the proposed dislocation, will, on the concealed surface, as per Ch. vi. Legislature, Section 8, *Election apparatus*, Art. 4, bear the words "*Dislocate him:*" of those who are *against* the proposed dislocation, the words "*Retain him.*" In each District, the votation finished, the Voting-box will, by the Vote Clerk, be forthwith transmitted to the Election Minister's Office. By the Election Minister, as soon as all are received, or the time for receiving them is elapsed, they will, in concert with the Legislation Minister, be opened in the Legislation Chamber, at the next sitting of the Legislature. The numbers will thereupon be immediately cast up, and the result declared. In case of dislocation, the vacancy produced on this extraordinary occasion will thereupon be

sideration of any political question, the several individuals present.

6. The auditory, at any dramatic entertainment, at which objects of a political or moral nature are brought upon the stage.

7. All persons taking for the subject of their speeches, writings, or reflections, any act or discourse of any public functionary, or body of public functionaries, belonging to this state.

Instructional.

Art. 4. Public Opinion may be considered as a system of law, emanating from the body of the people. If there be no individually assignable form of words in and by which it stands expressed, it is but upon a par in this particular with that rule of action which, emanating as it does from lawyers, official and professional, and not sanctioned by the Legislative authority, otherwise than by tacit sufferance, is in England designated by the appellation of *Common Law*. To the pernicious exercise of the power of government, it is the only check; to the beneficial, an indispensable supplement. Able rulers lead it; prudent rulers lead or follow it; foolish rulers disregard it. Even at the present stage in the career of civilisation, its dictates coincide, on most points, with those of the *greatest-happiness principle;* on some, however, it still deviates from them: but, as its deviations have all along been less and less numerous, and less wide, sooner or later they will cease to be discernible; aberration will vanish, coincidence will be complete.

Section V.

Public-Opinion Tribunal.

Functions.

Enactive. Expositive.

Art. 1. To the several members of the Public-Opinion Tribunal, as such, belong the distinguishable functions following; namely—

1. *Statistic*, or say *Evidence-furnishing function*. Exercise is given to it, in so far as indication is afforded of facts, of a nature to operate as grounds for judgment, of approbation or disapprobation, in relation to any public institution, ordinance, arrangement, proceeding, or measure, past, present, or supposed future contingent, or to any mode of conduct on the part of any person, functionary or non-functionary, by which the interests of the public at large may be affected.

Expositive.

Art. 2. *Censorial function.*—Exercise is given to it in so far as expression is given to any judgment of approbation or disapprobation, in relation to any such object as above.

Expositive.

Art. 3. *Executive function.*—Exercise is given to it in so far as, by the performing or withholding of good offices, such as a man is by law warranted in withholding, or by the performing of evil offices, such as a man is by law allowed to perform, addition—whether in consequence of such indication, as above, or otherwise—is made to, or defalcation made from, the happiness of the person in question, as above; and as by the thus withholding of good offices the effect of punishment, so by the rendering of them may the effect of reward, be produced.

Expositive.

Art. 4. *Melioration-suggestive function.*—Exercise is given to it in so far as, from the observation of what is amiss or wanting, a conception of something better having been formed, has, as such, been held up to the view of those whom it may concern, to the end, that if approved, it may be brought into practice.

Enactive. Ratiocinative.

Art. 5. On *functionaries*, the exercise of the statistic function is not only *morally* but *legally* obligatory: for the rendering of this service, the mass of benefit which, in whatever shape, pay included, stands attached to their respective offices, is their reward. On *non-functionaries, morally* only: *factitious* reward, none is provided for them, none is needed for them; *natural*, appropriate, and exactly proportionate reward, in proportion as his service is known, and the nature of it understood, each man will receive, in and by means of the esteem, produced by the contemplation of it.

Expositive. Instructional.

Art. 6. Of the heads, to which imperfections, ascribed to the law, by amendments, may be referrible, examples are as follows:—

I. As to *matter*. Want of conduciveness to the general *end*. The arrangement, as supposed, not so conformable to the greatest happiness principle as it might be.

II. For examples of want of *completeness* as to *matter*, see any of the lists of *exceptions* in this Code, and suppose any one of those same exceptions omitted.

III. For examples of want of *completeness* as to *form*, in any one of the lists of *examples*, suppose this or that example not inserted.

IV. As to *form*. Want of *clearness:* to wit, in such or such a clause or assemblage of clauses; as to the effect, obscurity or ambiguity: as to the cause, that is to say the words, —redundancy, deficiency, inappositeness, or miscollocation.

V. As to *matter* or *form*, want of *completeness:* this or that case, as supposed, not being provided for: because, as supposed, not contemplated.

VI. In the *Adjective Code* in particular,—or say the *Procedure Code;* on the part of this or that arrangement, want of conduciveness to the general end: to wit, by reason of want of conduciveness to this or that one of the ends of justice, direct and collateral: the direct end,

being the giving execution and effect to the correspondent portion of the Substantive Code; the collateral end, the keeping the practice clear of needless delay, vexation and expense —evils correspondent and opposite to so many specific collateral ends of justice.

Note, that in speaking of ends, instead of *one*, the number of direct ends may be stated as being *two:* in which case the opposite evils will be *misdecision* and *non-decision:* for by non-decision may be produced the effect of misdecision: to wit, in disfavour of the pursuer's side.

Enactive.

ART. 7. When a supposed amendment, as above, is suggested, the two forms, in either of which, for the preservation of symmetry, it may be expressed, may be seen in Ch. vi. LEGISLATURE, Section 29, *Members' Motions:* Of the non-preservation of symmetry, the consequences may be seen in Ch. xi. Section 2, *Legislation Minister.*

Instructional.

ART. 8. In support of his amendment, the proposer will do well to subjoin, under the following heads, concise indications of the reasons, by the consideration of which, he was induced to propose it. These will be—

I. Evil effects, regarded as flowing from the law as it stands: or,

II. Good effects expected to result from the proposed amendment, if adopted.

The more condensed and compact his reasons, the greater will be their chance of being attended to: by every attempt to move the passions it will be lessened.

Instructional.

ART. 9. On the tutelary influence of the Public-Opinion Tribunal, this Constitution relies, in a more especial manner, for the efficiency of the securities which it provides, for good conduct, on the part of the several functionaries, belonging to the Judiciary Department. See in the several Chapters the several Sections headed by the words *Securities for apropriate aptitude.*

SECTION VI.

Securities against Legislative, and Judiciary.

Enactive.

ART. 1. To every person, elector, inhabitant, or foreigner,—to every individual of the human species, belongs the right of exercising, in relation to the condition of every department of this government, and the conduct of every functionary thereto belonging, the *statistic, executive,* and *melioration-suggestive* functions above-mentioned.

Enactive. Ratiocinative.

ART. 2. So likewise the *Censorial:* how strong soever the terms, in which the approbation or disapprobation stands expressed. Vituperation, if indecorous, will receive its proportionate punishment at the hands of the Public-Opinion Tribunal: defamation, if mendacious or temeracious, at the hands of the Penal Code. Defamation there is none, without intimation given of some illegal or immoral act;—intimation individually, or at least specifically, determinate. If, being false, the intimation is temeracious only, and not mendacious, the official situation, of the party defamed, is a ground—not of aggravation, but of extenuation. The military functionary is paid for being shot at. The civil functionary is paid for being spoken and written at. The soldier, who will not face musquetry, is one sort of coward. The civilian, who will not endure obloquy, is another. Better he be defamed, though it be ever so unjustly, than that, by a breach of official duty, any sinister profit sought should be reaped. To him who has power, opulence, or reputation, self-defence is, in proportion to his power, opulence, or reputation, more easy than if he had none: defenders cannot be wanting to him, so long as he has patrons, colleagues, or dependents.

Enactive. Expositive.

ART. 3. By prohibition, restriction or taxation, to throw obstruction in the way of production or diffusion of political tracts, especially newspapers and other periodical ones, would, on the part of the Legislature, be a breach of trust, a violation of its duty to the Constitutive; an act of insubordination, obstructing their constitutional superordinates in the exercise of their authority, by depriving them of the means of forming correct judgments: an act of partiality and oppression, withholding from one class of men, documents not withholden from another: withholding, from *the many,* benefits, not withholden from the more wealthy *few:* withholding instruction from those, by whom it is most needed. It would be an anti-constitutional act: as such, it would call for marks of disapprobation, at the hands of the members of the Supreme Constitutive; namely, as well in their character of Electors, as in their character of Members of the Public-Opinion Tribunal.

Enactive. Expositive.

ART. 4. No such act of insubordination is committed, by punishment judicially inflicted, or demanded, for defamation, when effected or endeavoured at by falsehood, accompanied by criminal *evil-consciousness,* or culpable *temerity of assertion,* as to which see the Penal Code.

Instructional.

ART. 5. Every act, whereby, in the above or any other way, a man seeks to weaken the effective power of the Public-Opinion Tribunal, or by falsehood, or (what comes to the same thing) by suppression of truth, to misdirect it, is evidence, of hostility on his part to the

greatest happiness of the greatest number: evidence of the worst intentions, generated by the worst motives: evidence which, though but tacit and circumstantial, and though it be ever so unwilling, is not the less conclusive. Every act, whereby a man seeks to diminish the circulation of opinions opposite to those which he professes, is evidence of his consciousness of the rectitude of those which he is combating, and thereby of the insincerity, hypocrisy, tyrannicalness, and selfishness which have taken possession of his mind. Sincere or insincere, he may, without fear of injustice, be numbered among the enemies of the human species.

CHAPTER VI.

LEGISLATURE.

Section I.

Powers:—and Duties.

Enactive.

Art. 1. The Supreme Legislature is omnicompetent. Coextensive with the territory of the state is its local field of service; coextensive with the field of human action is its logical field of service.—To its power, there are no limits. In place of limits, it has checks. These checks are applied, by the securities, provided for good conduct on the part of the several members, individually operated upon; as per section 31, *Securities for appropriate aptitude.*

Enactive. Ratiocinative.

Art. 2. The power thus unlimited is that of the Legislature *for the time being.* To no anterior Legislature belongs any power, otherwise than by confirmation given to it by the Legislature for the time being. Dead men can neither fine, nor imprison, nor banish living ones.

Enactive.

Art. 3. But, in so far as nothing appears to the contrary, confirmation of the acts, of all anterior Legislatures, and of all authorities subordinate to them, takes place of course.

Enactive.

Art. 4. For the means employed for preserving Government engagements against violation. See Section 2, *Responsibility.*

Enactive.

Art. 5. The Supreme Legislative Authority has, for its immediate instrument, the Supreme *Executive*, composed of the *administrative* and the *judiciary*, acting within their respective spheres. On the will of the Supreme Constitutive the Supreme Legislative is dependent, as per Ch. v. Section 2, *Powers.* Absolute and all-comprehensive is this dependence. So also, on the will of the Legislature the will of the Executive, and the wills of the Sub-legislatures.

Enactive. Ratiocinative.

Art. 6. Only by unalterable physical impotence, is the Supreme Legislature prevented from being its own executive, or from being the sole Legislature. The Supreme Legislature will not, to the neglect of its own duties, take upon itself any of those functions, for the apt exercise of which, when taken in the aggregate, those subordinate authorities alone, can, in respect of disposable time, appropriate knowledge, judgment, and active aptitude, have been provided with sufficient means. But, in case of non-performance, or unapt performance, or well-grounded apprehension of either,—to the exercise of no function of the Executive or the Sub-legislative authority can the Supreme Legislature be incompetent.—Unfaithfulness, yes: but to the Supreme Legislature, neither can usurpation nor encroachment be imputed.

Enactive. Expositive.

Art. 7. To those functions which belong exclusively to itself, the Legislature accordingly adds, in case of necessity, those which belong respectively to all those its several subordinates, as per the several ensuing Chapters.

Enactive. Expositive.

Art. 8. In those same Chapters may moreover be seen, so many exemplifications of the subjects, to which the attention and proceedings of the Legislature will, constantly or occasionally, be directed.

Enactive.

Art. 9. Separately or collectively, the Constituents of a Member of the Legislature will, at all times, as such, make to such their deputy what communication they think fit: to his cognitive faculty, to his judicative faculty, or even to his will, it may be addressed. But, in so far as the good of the community taken in the aggregate is the paramount object of his care, no obedience will he pay to any such particular will, to the detriment of what appears to him the universal interest. Paramount to his duty to a part is, on every occasion, his duty to the whole. An engagement, exacted of him by a part, would be an act of insubordination as towards the whole. It belongs not to him to judge until he has seen or heard. His will is commanded by his judgment, not his judgment by his will. Such contrariety may have place, without detriment to moral aptitude on either side. They may have good reason for dislocating him; he for exposing himself to be so dislocated.

Instructional. Ratiocinative.

Art. 10. If, on this or that particular occasion, in the opinion of Constituents, or in the

opinion of their Deputy, a conflict should have place between their particular aggregate interest and the national interest, he will not be considered as violating his duty to the public, by giving his vote in favour of that same particular interest. For, the national interest being nothing more than an aggregate of the several particular interests, if against that which has been regarded as being the national interest, there be a majority, this result will prove, that in the so declared opinion of that same majority, that, which had been spoken of as if it were the national interest, was not so. If, in support of that which, by a *majority* of his *Constituents*, is regarded as being their interest, there be *not* a *majority* in the *Legislature*, his vote will be of no effect; and, to the national interest, no evil will have been done by it. On the other hand, a practice, which in every case is evil, is *insincerity:* and in this case, by the supposition no good at all, therefore no preponderant good would be produced by it.

Instructional. Ratiocinative.

ART. 11. Accordingly, if so it should happen, that, after *speaking* in *support* of an arrangement, which, in the opinion of his Constituents, is contrary to their particular interest, he gives his vote *against* that same arrangement,—in such conduct there is not any real inconsistency. By his *speech*, his duty to the *public* is fulfilled; by his *vote*, his duty to his Constituents.

Instructional. Ratiocinative.

ART. 12. Moreover, what, on an occasion of this sort, may very well happen, is—that an arrangement which, in the eyes of Constituents, is detrimental to their interest, is not so: and *vice versâ:* and, in this case, his speech in support of the opposite arrangement may have the effect of working a change in their opinion; and on a succeeding occasion, causing them to concur with the arrangement supported by him, instead of opposing it.

Enactive. Ratiocinative.

ART. 13. Variable at all times,—variable at the pleasure of the Legislature for the time being,—is every article in this and every other Code. For every moment of its duration, on its reasonableness, first in the eyes of the Legislative, then in the eyes of the Constitutive, is its sole dependence. Not to speak of *years*, if, for any one day, error could prudently be exempted from correction, so might it for every other. If the wisdom of to-day is superior to that of to-morrow, so may it be to that of every day, to the end of time. Blinded by prejudice must that man be who, assured that he is wiser to-day than he was yesterday, holds himself not equally assured that to-morrow he may be wiser than to-day. Blinded by vanity or selfishness must that man be who, assured that in knowledge and judgment he is beyond those who are gone before him, holds not himself equally assured that, in those same endowments, those who come after him may be beyond *him*. By individual responsibility, as per section 2, *Responsibility*, sufficient is the security afforded against inconsiderate and groundless changes: a degree of security far superior to any which can be afforded by any Constitution by which correction of error is inhibited to or by the Legislature.

SECTION II.

RESPONSIBILITY.

Enactive. Ratiocinative.

ART. 1. Of the Constitutive Authority, the constant will, (for such it cannot but be presumed to be,) is, that the national felicity—the happiness of the greatest number—be maximized: to this will, on each occasion, it is the duty of the Supreme Legislature, according to the measure of its ability, to give execution and effect.

Enactive.

ART. 2. If, on any occasion, any ordinance, which to some shall appear repugnant to the principles of this Constitution, shall come to have been enacted by the Legislature, such ordinance is not on that account to be, by any judge, treated or spoken of as being null and void: not even although its tendency, intended as well as actual, were to appear to him to be to diminish the mass of power hereby reserved to the Constitutive Authority. But if, of any such act, the tendency be anti-constitutional, as above, it may form an apt ground for an exercise to be given by the Electors, to their incidental dislocative, and punifactive functions, applying them respectively to such members of the Legislature, by whom motion, speech, or vote shall have been given in favour of the supposed anti-constitutional arrangement: and in any Judicatory, such, by the Judge principal, may any such act, on its coming regularly before him, be in his opinion declared to be.

Enactive. Ratiocinative.

ART. 3. To the Constitutive Authority and, *that* alone, it belongs to enforce the observance of contracts entered into by the Legislature; and in one word to afford such redress as can be afforded to misdeeds, in whatever shape, perseveringly committed by the Legislature. A law, ordaining that, in no case, a contract entered into by the Legislature, shall remain in any part unperformed by it, would be alike inefficient to good purposes,—efficient to bad ones.

Ratiocinative.

ART. 4. A contract, if fit to be performed, was made for increase of felicity, not for lessening it. Be the contract what it may, prove that by non-observance of it, more felicity, all

items taken into account, would be produced, than by observance, you prove that it ought not to be observed. If all contracts were to be observed, all misdeeds would be to be committed: for there is no misdeed, the committal of which may not be made the subject of a contract; and to establish in favour of themselves, or of any other person or persons, an absolute despotism, a set of Legislators would have no more to do than to enter into an engagement—say with a foreign despot, say with a member of their own community—for that purpose. A Monarch, that he may persevere in a course of depredation and oppression with the less disturbance, binds himself (suppose) to perpetuate it. An instrument has been contrived for this purpose. It is called *an oath*—a coronation oath. Propose to him to assuage the misrule, "Alas! my oath!" (he cries) "my oath!" and all who share or look to share in the profit of the misrule, join with him in chorus.

Enactive.

Art 5. In the case of a contract entered into by the Government with any person or persons belonging to this state, it will rest with the judiciary to take cognizance of it, as in a case between individual and individual. Yet, to a decision pronounced thereupon by the competent judicial authority, should the Legislature, by any ordinance, act in declared repugnance, such ordinance is not, on that account, to be regarded as *null and void*.

Enactive.

Art. 6. So, in the case of a contract with the government of any foreign state.

Enactive.

Art. 7. So, in the case of a contract with a subject of any foreign state.

Enactive.

Art. 8. But, in all three cases, apt grounds may have place for the exercise of the incidental dislocative function, on the part of the Constitutive Authority, as per Ch. v. Constitutive, section 2, *Powers*, at the charge of the Members, who have concurred in the breach of public faith: the dislocative function, with or without the punifactive.

Enactive.

Art. 9. For wrong, in any shape, alleged to have been done to any foreign government, whether by breach of contract or otherwise, such Government may have judicial remedy, by suit in the immediate judicatory of the Metropolis of the state; Defendant, the Government Advocate-General of this state.

Enactive.

Art. 10. Yet, on any such occasion, should any ordinance have been issued by the Legislature, in relation to the matter of such suit after the commencement thereof, it belongs not to any judge to omit giving execution and effect to that same ordinance.

Enactive.

Art. 11. But here, likewise, apt grounds may have place for the exercise of the remedial functions of the Constitutive Authority, as above.

Section III.

Powers as to Sub-legislatures.

Enactive.

Art. 1. In relation to the hereinafter-mentioned Sub-legislatures, the Supreme Legislature exercises the several functions, *directive, corrective, arbitrative.*

Enactive.

Art. 2. I. *Directive function.* In the exercise of this function, it gives, as often as it sees convenient, antecedent and preparatory direction to their several proceedings.

Enactive.

Art. 3. II. *Corrective function.* In the exercise of this function, it in like manner abolishes, reverses, amends, or causes to be amended, any of their ordinances, or other proceedings.

Enactive.

Art. 4. III. *Arbitrative function.* In the exercise of this function, as often as, between one Sub-legislature and another, contestation has place, it gives termination thereto by an appropriate arrangement.

Instructional.

Art. 5. In the case of a federal Government, here may be the place for appropriate alteration. The Sub-legislatures would be the Legislatures of the several states.

Section IV. *Seats and Districts.* See *Election Code*, section 1.*

Section V. *Electors who.* See *Election Code*, section 2.

Section VI. *Eligible who.* See *Election Code*, section 3, and below, section 25, *Relocable who.*

Section VII. *Election Offices.* See *Election Code*, section 4.

Section VIII. *Election Apparatus.* See *Election Code*, section 5.

Section IX. *Recommendation of proposed Members—how promulgated.* See *Election Code*, section 6.

Section X. *Voters' Titles, how pre-established.* See *Election Code*, section 7.

* The work called *Radical Reform Bill*, was first intended by the author to be termed *Election Code.* It appears near the end of vol. iii. in this collection, and a list of titles of sections virtually corresponding with the above will be found in p. 563.—*Ed.*

SECTION XI. *Election, how.* See *Election Code*, section 8.

SECTION XII. *Election Districts and Voting Districts, how marked out.* See *Election Code*, section 9.

SECTION XIII. *Vote-making Habitations, how defined.* See *Election Code*, section 10.

SECTION XIV. *Term of Service.* See *Election Code*, section 11, *Members' Continuance;* and in this Ch. section 22, *Term of Service—Continuation.*

SECTION XV. *Vacancies, how supplied.* See *Election Code*, section 12.

SECTION XVI. *Security of the Assembly against Disturbance by Members.* See *Election Code*, section 13.

SECTION XVII. *Indisposition of Presidents, how obviated.* See *Election Code*, section 14.

SECTION XVIII.

Attendance.

Enactive.

ART. 1. Exceptions excepted, the Legislature sits every day in the year. Exceptions are Vacation days. Vacation days are every seventh day; that is to say, every day of general rest. But urgency declared, sittings have place in Vacation days.

Ratiocinative.

ART. 2. A domestic servant is a servant of one: a Legislator is a servant of all. No domestic servant absents himself at pleasure, and without leave. The masters of the Legislator give no such leave. From non-attendance of a domestic servant, the evil is upon a domestic scale: of a Legislator, on a national scale. A Legislator is a physician of the body politic. No physician receives pay but in proportion to attendance. The physician has no vacation days.

SECTION XIX.

Remuneration.

Enactive.

ART. 1. Of a Member of the Legislature the pecuniary remuneration is [ ] per day. Added to this are the power and dignity inseparable from the office. Of ulterior emolument, receipt, if from unwilling hands, is *extortion;* if from willing ones, *corruption:* as to which, see Penal Code. For principles as to Official Remuneration, see Ch. IX. MINISTERS COLLECTIVELY. Section 15, *Remuneration.*

SECTION XX.

Attendance and Remuneration—how connected.

Enactive.

ART. 1. Into the Assembly Chamber there is but one entrance. The retiring rooms are behind and above. Committee rooms have other entrances.

Enactive.

ART. 2. Each day, on entrance into the Assembly Chamber, each member receives that day's pay at the hands of the Door-keeper. In his view, and in that of the company in the Assembly Chamber, is a clock. On delivery of the pay, the Door-keeper stamps, in the *Entrance and Departure Book*, on the page of that day, the member's name, adding the hour and minute.

Enactive.

ART. 3. No member departs without leave of the President, who, on a sign made by the departer, rings, by a string within his reach, a bell hanging near the Door-keeper, who, after stamping in the Entrance and Departure Book, on the page of that day, the member's name, with the hour and minute, lets him out. (A retiring place, opening only into the Chamber, is of course supposed.)

Enactive.

ART. 4. Sick or well, for no day, on which he does not attend, vacation days excepted, does any *Legislator* receive his pay.

Enactive.

ART. 5. Under the direction of the hereinafter-mentioned *Legislation Minister*, is kept the *Non-Attendance*, or say *Absentation Book.* In it, from the *Entrance and Departure Book*, entry is made of the days on which the several absenting members have respectively absented themselves: and for the information of their respective constituents, he causes the result to be published in the Government newspaper on the next day, as also at the beginning of each month; and at the time when the Election Minister issues his mandates for the General Election, a summary of all the absentations of the last preceding Session under the names of the several absentees.

Enactive.

ART. 6. If, by sickness, a member has been prevented from attending, he, on the first day of his re-attendance, presents to the Door-keeper a *sickness ticket*, on which are marked the day or days of non-attendance, with an intimation of the nature of the sickness, authenticated by his name in his own hand-writing, and the attestation of a physician.

Enactive.

ART. 7. To clear a member from the suspicion of employing sickness as a pretence for avoiding to give his vote or speech, questions may be put to him and others, in the face of the Assembly, and observations made. For ulterior securities against non-attendance, see section 23, *Self-suppletive function.*

Ratiocinative.

Art. 8. A soldier, if he fails in his attendance, is punished as a deserter: punished with corporeal punishment: in England, with flogging or perhaps with death. Under this code, or any that is in consonance with it, in the case of no man, military or non-military, will punishment in either of those shapes be employed: for in neither is it needed. But, in this case, as in every other, whatever is needed, why should it not be applied?—and what can be milder than the simple withholding of reward in proportion as the service remains unperformed?

Ratiocinative.

Art. 9. If, how severe soever, such means, as are regarded as efficacious and necessary, are employed for securing the service, exacted, whether with or without his previous consent to the engagement, from a common soldier, in what higher situation, were they ever so severe, should measures equally efficacious, supposing them necessary, be grudged? And should not they be the less grudged, the higher the duties of the situation in the scale of importance?

Ratiocinative.

Art. 10. As between individual and individual, where it is by the quantity of time employed in service that the quantum of remuneration is measured—payment being made by the day, as in the case of a common labourer or artisan, or by the hour, as in the case of a professional instructor—in what case, unless on the score of pure charity, does any person think of paying or asking payment for any quantity of time, during which no service has been performed? Why then as between an individual and the public?

Ratiocinative. Instructional.

Art. 11. By usage, intermission of Legislative business has hitherto been everywhere established. But, by such usage, were it ever so many times as extensive as it is, the need of uninterrupted attendance would not be disproved. Whatsoever is, anywhere, the proportion of attendance actually given, the presumption indeed is, of course, that it is sufficient—sufficient for all purposes. But for this presumption there exists not, anywhere, any the smallest ground. From the bare consideration of the nature of the case, the assurance may be entire, that, in the state in question, whatsoever it be, evil effects of the most serious kind have been continually taking place: and, in almost any proportion, such effects may have had place without its being possible to trace them, or, at any rate, without their having in general been traced to their cause.

Instructional.

Art. 12. In political states other than the Anglo-American states—that is to say, in all mixed monarchies, non-attendance has had, for its obvious cause, the sinister interest of rulers.

Instructional.

Art. 13. These rulers are—1. The Monarch, with his more especial dependants; 2. His junior partners in the concern—the members of the aristocracy, and, in particular, those who have seats in any Legislative Chamber.

Instructional.

Art. 14. By the Monarch and his dependants more especially it is, that those vast gaps have been made which have had place between session and session, and which have for their efficient cause the operations called *prorogation* and *adjournment: prorogation*, avowedly the act of the Monarch himself; adjournment that of the Monarch, by the hands of those his agents.

Instructional.

Art. 15. In England, for example, by the act of the Monarch alone, about the half of the year is habitually taken from the public service: in this case, the act is called *a prorogation*, and to this defalcation is added *that* of a month, or more, taken at various times by the House of Commons: not to speak of the House of Lords: in this case, the act is called *an adjournment*.

Instructional.

Art. 16. The original object was, of course, as history shows, to extinguish the existence of these troublesome concurrents and sharers in the sweets of Government: *that* being found impracticable, the next object of wish and endeavour was, is, and will be, to minimize their action. Of the whole quantity of the time employed by them, a certain portion must of necessity, for the purpose, and under the direction of, the Monarch, be employed in going through the forms necessary to the extraction of money, and in such other business as the conjunct interest of the Monarch and the Aristocracy requires to be performed. For this purpose, whatsoever quantity of time is necessary, is by law always at his command. Upon all measures whatsoever, coming from any other quarter, and, in particular, all measures tending to the melioration of the constitution, an exclusion is put, of course, in whatever way may be most commodious; and the most commodious, because the least exposed to observation, is the making such disposal of the time as shall either prevent anything troublesome from being brought on the carpet, or, when on, from being finished. As to this, see *Parliamentary Reform Catechism*, vol. iii. p. 435.—*Introduction.*

Instructional.

Art. 17. In addition to *power*, which, together with *ease*, is thus obtained in the wholesale way, comes the ease, which is obtained in the retail way by non-attendance, at business-

times, on the part of particular individuals. Hence comes the curious phenomenon. In the principal House for business, seats 658: number necessary to be filled to give validity to the proceedings, 40: every session, several times does it happen, that, for want of this necessary number, the day is lost to the public service. The President excepted, by whom (under the name of *speaker*) the business must be directed, —on no session, by any one member, has attendance on every day perhaps been ever paid: out of the 658, not one by whom, under this head, *that* has been done, which ought to have been done by every one. In addition to those who are paid by the over-paid offices, by which they are kept in a state of corruption,—chance having of late produced an individual by whom the public service, for which he was engaged, has for years been made his principal and gratuitous occupation; at the observation of such a phenomenon, every body continues lost in amazement. But *power without obligation* is the very definition of despotism: *slavery* the condition of those who are subject to it. Here, then, is a form of government, under which, by those who should be servants, those who should be masters are kept in a state which is *by law* a state of slavery: howsoever, by the healing hand of Public Opinion, the rigour of the despotism may be softened.

Instructional.

ART. 18. In the Anglo-American United States, although power is not eased of obligation, still, in this same form, is breach of constitutional duty suffered to have place. Of each year, on an average, not so much as two-fifths are occupied in fulfilment. Of this neglect, what can be the cause! Answer—unreflecting imitation: imitation, too, of an original, the general inaptitude of which affords, to those who have rid themselves of it, matter of such just and unceasing self-congratulation. True it is, that, in the copy, the individual and retail idleness is not, because for various reasons it cannot be, anything near so flagrant as in the original: but the aggregate and wholesale idleness is little less enormous.

Ratiocinative. Instructional.

ART. 19. When, in all situations in which the business is of subordinate importance, the attendance is so unintermitted,—why should it be less so in those in which the business is all-comprehensive, and the importance of it supreme!

Instructional.

ART. 20. Every year, in a tone of exultation, assuredly by no means ungrounded, the President, in his Message to Congress, reminds the people of the good done in the course of the last. One day may perhaps produce the opposite account: the account of the good, which, by blindness and idleness, has thus been left undone. But, by the phrase *good left undone*, much too favourable is the representation given of the effect. Of the good left undone, one portion—and *that* by far the most important—is composed of the exclusion that should have been put upon the evil—the extensive and positive afflictions which have thus been suffered to take place.

Instructional.

ART. 21. Amongst the accounts, thus given by authority, let there be one, for example, of the misery produced by tardiness, on the occasion of the adjustment of the state of the Insolvency laws, as between the central government and the several states: a matter which, to this day, 24th Jan. 1826, remains, after all, unadjusted.

Instructional.

ART. 22. For the inefficiency here mentioned, two more causes are visible: one is, *that* which belongs to the present head—the suffering so much to be unemployed: the other is, the suffering so much to be wasted in the commencement of businesses, the time employed in which is by the conclusion of the session turned to waste, for want of their being handed over by the outgoing to the incoming Legislature. As to this, see section 24, *Continuation Committee.*

Instructional.

ART. 23. As to the subsidiary obligations above provided, the more efficient, the less favourably, of course, will these chains be thought of and spoken of, by those for whose wear they are designed. But, at no less price can the effect be accomplished.

Instructional.

ART. 24. On architecture good Government has more dependence than men have hitherto seemed to be aware of. Those who wish not for absentation or untimely departure, from any *seat of business*, must not admit of multiplied or unobserved entrances and exits. Those who wish to exclude abuse from *prisons*, must not have a space in which either the behaviour of any prisoner, or the treatment he experiences, is not continually exposed to every desiring eye. Those Judges, whose wish it is to exclude inspectors from the seat of judicature, (and such of course have ever been all English Judges,) know well how powerless every other *veto* is, in comparison with that which the Architect alone can issue, and secure completely against non-observance.

Instructional.

ART. 25. *Non-attendance* is not the only cause of frustration and retardation in the provision for public exigencies. *Another* is the want of a supply for the *involuntary* deficiency created by death or sickness. For remedy, see section 23, *Self-suppletive function.* A *third* may be seen in the improvidence, or sinister

providence, by which each successive Legislature is deprived of the benefit of all former work, commenced and left unfinished by its predecessor. For remedy, see section 24, *Continuation Committee.*

Section. XXI.

Sittings public and secret.

Enactive.

Art. 1. Special cause to the contrary excepted, the sittings of this Assembly are, at all times, public. The auditory is a committee of the Public-Opinion Tribunal, hearing and reporting for the information of the Constitutive.

Enactive.

Art. 2. So far as is consistent with convenience in respect of health, sight, hearing, minutation, and necessary intercommunication between actor and actor on the Legislation theatre, together with lodgment for requisite and appropriate furniture, this Constitution requires that the number of the members of the Public-Opinion Tribunal, to whom access and appropriate accommodation is given, be maximized.

Enactive.

Art. 3. To the hereinafter-mentioned Legislation Minister it belongs to keep a *secret sitting-book.* In it, in the case of a secret sitting, are entries made as follows:—

1. Year, month, and day of the motion for secrecy.
2. Names of movers, voters, and speakers for and against the secrecy.
3 Names, or initials, in their own handwritings respectively.
4. Alleged cause of the demand for secrecy.

Enactive.

Art. 4. If divulgation has not already had place, cognizance is taken, of course, by the next succeeding Legislature, of the truth and sufficiency of the allegations: if either be wanting, censure is passed on the members, by whom the secrecy was voted.

Enactive.

Art. 5. Then is the regular time for divulgation. But if the cause for secrecy subsists, divulgation may be referred to the same Legislature on some succeeding day of that year, or to the next succeeding Legislature: and so on from Legislature to Legislature.

Enactive.

Art. 6. For other cases for secrecy, as to the operation of public functionaries, see Ch. viii. Prime Minister. Section 11, *Publication system.*

Section XXII.

Term of Service—Continuation.

Ratiocinative. Instructional.

Art. 1. Exceptions excepted, the shorter the term of service in the Legislative Assembly can be rendered, consistently with the avoidance of precipitation and performance of duty, the better. For reasons, see section 23, *Self-suppletive function,* section 24, *Continuation Committee,* and section 25, *Relocable who.*

Instructional.

Art. 2. Exception may be, if in any part of the territory of the State there be Districts, one or more, so situated in respect of remoteness from the seat of legislation, and difficulty of travelling taken together, that, by the time consumed in the journey, too great a difference would be made between those Districts and the others, in respect of means of giving information to, and support to their interests in, the Legislative Assembly.

Instructional.

Art. 3. Note that, on this occasion, the time necessarily expended in the giving and receiving information, as between the Legislature and the constituted Authorities and individuals residing in the remote Districts, in relation to exigencies peculiar to these districts, is the only time which, in the nature of the case, needs, to this purpose, to be taken into account. For, as to the regular time of election, if as per section 25, *Relocable who,* the Members who have sitten on any year are excluded from relocability in the next, the day of universal vacancy being always foreseen and predetermined, the first of the days occupied in the election process may, without difficulty, be appointed to be as many days anterior to that same day,—as including the time occupied in the journey from the District to the seat of Legislature, shall be sufficient to secure the timely arrival of the elected Deputy at the seat of Legislature. Thus much as to the regularly recurring vacancies: as to the accidental vacancies, caused by death, resignation, or dislocation, replenishment will be seen effectually secured by section 23, *Self-suppletive function.*

Instructional.

Art. 4. Supposing these arrangements thus settled,—Elections may just as well take place, in virtue of a pre-established and continued general regulation, as in virtue of a special mandate offered by an individual functionary, such as the *Election Minister,* as per Election Code, and Ch. xi. Ministers severally. Section 1, *Election Minister.* Indeed much better: for when the performance of a process or operation is made, or left, dependent upon the act of a public functionary, or, in a word, on the act of any person whatever, it is left

liable to be prevented by any one of a variety of accidents as also by sinister design on the part of that same functionary, with or without concert with others.

Instructional.

ART. 5. In Monarchies it was that the *Representative*, or say, the *Deputation system*, originated. Of course, under such a form of government, no such process as that of deputation to a common assembly could be commenced, otherwise than in consequence of, and in conformity to, the will of the Monarch, as promulgated on some particular day, by a known servant of his, appointed for this purpose. Hence the need of *Election authorizing-and-commencing mandates.*

Instructional.

ART. 6. In no one of the several Anglo-American United States is the term of service in the Legislative Assembly more than one year. In one of them, *Connecticut*, it is, or was, no more than half a year. In the General Congress it is *two* years. The difference has for its obvious cause the consideration of distance. Had the considerations mentioned, and expedients referred to, in Art. 3, occurred, would or would not the length of the *term of service* have in that case been thus doubled?

SECTION XXIII.

Self-suppletive function.

Enactive. Expositive.

ART. 1. *Self-suppletive function.* To every Deputy is communicated, by the act of Election, the power of locating and keeping located, upon and for every occasion, some person of his own choice, to act in all things in his stead, at what time soever he is incapable of acting for himself, or does not act. To every Deputy accordingly belongs this power, together with the obligation of keeping it in exercise.

Enactive.

ART. 2. Compensationally, punitionally, and dislocationally responsible, is the Deputy for the acts of this his substitute.

Enactive. Ratiocinative.

ART. 3. Exceptions excepted, locable as a Deputy's Substitute is every person who is locable as deputy.

Exception 1. Another member of the same Legislature. For, to a person so situated, though the power of giving a vote over and above his own might be communicated,—the power of making a speech over and above his own, or a motion over and above his own, could not.

Enactive.

ART. 4. By the Legislation Minister will be kept a set of blank *Substitution Instruments.* On each occasion, one of these instruments, filled up and signed by the Deputy, and signed by the Substitute, is, on his entrance into the Assembly Chamber, delivered by him to the Door-keeper: as to whom, see section 20, *Attendance and Remuneration, &c.*

Enactive.

ART. 5. To provide against casual inability on the part of the Deputy, as to the locating a Substitute in time for the occasion,—every Deputy, previously to his taking his seat in the Assembly Chamber, lodges, in the office of the Legislation Minister, a *Substitution instrument*, in favour of some person appointed to act as his permanent Substitute; the instrument being filled up and signed by himself, and signed by the substitute, who thereby engages to keep himself within reach, in readiness to attend on requisition. But, to such *permanent Substitute* may, on each occasion, as above, be substituted an *occasional* Substitute.

Enactive.

ART. 6. On timely information received, that on the then next, or any succeeding sitting day, the Deputy in question will certainly or probably not be able to pay attendance,—the Legislation Minister will cause to be summoned the above-mentioned Substitute: or the information may be given to the Substitute immediately, with or without its being given to the Legislation Minister: if dated and signed by the person giving it, it may be given either by the Deputy himself or by any other member of the Legislature, or by any other person sufficiently known to the Deputy.

Ratiocinative.

ART. 7. *Question* 1. Why thus make provision of a substitute to each deputy?

Answer. Reasons. I. Whatsoever need or use there is for a Deputy to act as member of the body in question, on any one day of the session,—the same there will be, for anything that can be known to the contrary, on every other.

Ratiocinative.

ART. 8. II. Whatsoever arrangements can, as above, be taken, as per section 20, *Attendance, &c.*, for securing plenitude of attendance on the part of the Deputy,—to render them completely effectual, without provision made of an eventual substitute, is not possible. Witness *definitive vacancy* by death, incurable infirmity, resignation, or dislocation: witness *occasional vacancy*, or say *non-attendance*, involuntary through sickness, voluntary through any one of an inscrutable multitude of causes. By the arrangements proposed in this section, this plenitude would be rendered complete and never-failing: every seat having daily a member duly authorized to fill it.

Ratiocinative. Expositive.

ART 9. III. For want of this desirable

plenitude, a mode of corruption has at all times been carried on to an indefinite extent: corruption, effectually safe, not only as against punishment at the hands of legal tribunals, but against scrutiny and censure at the hands of the Public-Opinion Tribunal. A man whom, had he been in attendance, the apprehension of that censure would have engaged to vote on the right side,—absents himself, and thereby, though he does not give to the wrong side the whole benefit of his vote, deprives the right side of it, and this, without any check to hinder him,—gives thus, on every occasion, to the wrong side half the benefit of a vote given in favour of that same wrong side. Corruption, where the purpose of it is thus executed, may be distinguished by the name of *semi-corruption* or say *absentation corruption*. Happily, though in this form it cannot with certainty be *punished*,—yet what is much better, it may, in the way that will be seen, be, with adequate certainty, *prevented*.

Ratiocinative.

Art. 10. IV. *Prevention of fluctuation.* In Legislative and other bodies, instances are not uncommon where the same measure has, by one and the same body, without any change in the number or sentiments of the Members, been alternately adopted and rejected: those who are in a majority one day finding themselves in a minority another day: hence confusion and uncertainty in the minds and actions of all persons whose interests are thus disposed of. Where attendance is optional, there are no assignable limits to the magnitude of the evil thus produced, nor to the frequency of its recurrence. By the plenitude here secured, evil in this shape would altogether be excluded.

Ratiocinative.

Art. 11. V. Saving of *solicitations of attendance*:—solicitations, with the accompanying *vexation*, *consumption* of individual's *time*, and sometimes even *delay* to public measures.

Ratiocinative.

Art. 12. VI. Thus, and for the first time, will the aggregate *will actually* expressed, be rendered constantly identical with the aggregate *will* which, on the occasion of all Elections of Deputies, to a Legislative or other representative assembly, is not only *intended* to be expressed, and almost as generally, howsoever erroneously, *regarded* as being actually expressed. Thus will an undesirable and reproachful distinction be obliterated: an imperfection, hitherto submitted to as if it were inherent in the constitution of a body of the sort in question, cleared away.

Ratiocinative.

Art. 13. VII. For want of this remedy,—questions, to the number and importance of which no limit can be assigned, must for their decision, have been dependent on *accident*: on accident in an unlimited variety of shapes, of which *sickness*, though a principal one, is but *one*. Apply this security, the power of accident, over this case is at an end.

Ratiocinative.

Art. 14. *Question* 2. Why give the supplative power to the Deputy, instead of reserving it to his Constituents?

Answer. Reasons. I. If the Constituents are the only persons to whom the power of providing the supply is given, the supply cannot ever be adequate; and the mode of making it cannot but be productive of divers evil effects; whereas, if the power be given to the Deputy, the supply may be rendered surely adequate, no such evil effects will be produced, and divers positive good effects will be produced.

Ratiocinative.

Art. 15. II. In this way, the adequacy of the supply may be, and by the here proposed arrangements, naturally will be, made perfectly sure. The Deputy, in case of his non-attendance, is made responsible for the attendance of a Substitute. This he may be without difficulty. The seat of the Legislature being naturally the metropolis of the State,—its sittings, as per section 18, *Attendance*, uninterrupted, and the metropolis the principle seat of business in the State,—the influx into it, on one account or other, from all the districts, naturally abundant and constant,—and in particular the influx of men who, in respect of condition in life, will be among the most apt for the situation in question—and these very arrangements furnishing an additional inducement for such influx,—all these things considered, any want of apt persons, ready, for the sake of the benefit, to take upon themselves the burthen, seems not in any degree to be apprehended.

Ratiocinative.

Art. 16. III. On the part of the eventual Substitute, if located by the Deputy, the attendance, in case of temporary non-attendance on the part of the Deputy, is more effectually secure, than if he were located by the Constituents in an immediate way, as above, it could be. The Substitute, being resident on the spot, will on every occasion be within call of the Deputy; and, the Deputy being bound for attendance on that same occasion,—thus, between the one and the other, adequate motives are accompanied by adequate means.

Ratiocinative.

Art. 17. IV. Suppose the Substitute located by the Constituents,—no such assurance of constancy in the supply can be obtained. By whatsoever causes, as above, non-attendance on the part of the Deputy is producible, by these same so is it on the part of the Substitute. Substitutes, more than one, could not

be proposed to be sent along with the Deputy: and whatsoever greater number could be proposed to be so sent, still the assurance could not be entire. True it is, that the above-mentioned course—of taking for the Substitute a person resident at the seat of service, would be open to their choice. But it would not be likely to be uniformly adopted: for, if permanently resident at that same seat of service, he would not be known to them: and if, in the case of this or that District, there were any such known person,—in the case of this or that other there would not be. At the best, the number that could be thus located—located to serve throughout the session—would be thus limited: whereas, to the number that could be located, one after another, as occasion called, by the Deputy, there are no limits.

Ratiocinative.

ART. 18. V. Suppose, however, an eventual Substitute located by the constituents. In the case of a vacancy, on the part of either Deputy or Substitute, here would be a demand for a fresh election. But, while the process of election was going on,—here would be but one of the two on the spot, and during that time there would be the same danger of want of attendance, as if no such provision of an eventual Substitute had been made.

Ratiocinative.

ART. 19. VI. On this supposition, too, comes the vexation and expense of the Election: loss of time on the part of all who attend: expense of journey to and fro and demurrage, on the part of many: and, from all this loss, no assignable advantage in any shape obtained.

Ratiocinative.

ART. 20. VII. Antecedent to the close of the Session, which, under the here proposed annuality of Election, is the same thing with the death of the Legislature,—there would be a certain number of days occupied by the Election process: during this time, the vacancy would of necessity remain unsupplied.

Ratiocinative.

ART. 21. VIII. So likewise, a greater number of days, during which a still longer vacancy would be produced by another cause. The utmost service that could be looked for at the hands of a new Member or Substitute, in the course of so short a time, would be regarded as not capable of compensating for the vexation and expense of the Election process, as above.

Ratiocinative.

ART. 22. IX. If the provision of a Substitute be made by the Electors, it must be at an expense charged upon the public: if by the Deputy himself, it may be made without expense: in the metropolis, for as many days in the year as can present the demand, sufficiently apt men in sufficient number, able and willing to serve, for so many different portions of so short a length of time, in so high a situation, without pecuniary retribution,—and taken together for the whole of it, one after another, —never can be wanting. Then, as to pay,—suppose the Substitute paid, and paid by the public, his pay will require to be at least equal to that of his Principal. It will, in truth, require to be greater; for, to that same Principal belongs the whole of the power; to the Substitute no part at all, except such, if any, as the Principal feels the desire, or lies under the necessity, of imparting to him: which is what can no otherwise be done, than by forbearing himself to exercise it. This being the case, if a *Substitute*, engaging for constancy of attendance, can be had *gratis*, much more can the *Principal*—the *Deputy;* and whatsoever pay, if any be necessary, suffices for the Substitute, still less will suffice for that same Principal.

Ratiocinative.

ART. 23. X. Positive good effects that afford a promise of being produced by this arrangement are as follows:—

1. Increase given to appropriate aptitude in all its branches, by admission given to persons who otherwise would have stood excluded. A person who, though in respect of such his aptitude, is the object of universal confidence, would, through old age or infirmity, have been incapacitated from, or disinclined to, the subjecting himself to any such constancy of attendance as is as above required under the notion of its being indispensable,—may, by the here proposed relief, be disposed to take upon himself the trust.

Ratiocinative.

ART. 24. XI. So, in like manner, a person who, though recommended to the notice and favour of the Electors by pre-eminent pecuniary responsibility, would otherwise, by the indolence naturally attendant on opulence, be deterred. In this case, as in the former, the natural subject of the proposed Deputy's choice would be some person, by whose appropriate aptitude, in the situation of Substitute, honour would, in the opinion of the Depute, be done to that same choice.

Ratiocinative.

ART. 25. XII. In both these cases, an opening is made for new men, in whose instance a special promise of appropriate aptitude is afforded; afforded, and, by means and motives, beyond such as are likely to have place on the part of a majority of the Electors.

Ratiocinative.

ART. 26. XIII. Attached to the situation of Deputy, here, in both these cases, would be *patronage:* and from this patronage, the value of the situation would, in the eyes of candi-

dates and competitors, receive increase. True it is, that, in other cases, patronage is a source and instrument of corruption: not so in this case. In no shape is any advantage given, which is not altogether dependent upon the free will of the people in the quality of Electors. In the case of the approved and respected patron, may be seen a promise of *moral*, in that of the *opulent patron*, of *pecuniary responsibility;* in that of the subject of their choice, a promise of appropriate *intellectual* and *active aptitude.*

Instructional. Ratiocinative.

Art. 27. What is above, considered,—it may be worth further consideration, whether it might not, with advantage and safety, be left at the option of every Deputy, whether to attend in his own person or by such his Substitute: attendance, on the part either of the one or the other, being unremittingly enforced. As to the public, it has been seen that it would be likely to be a gainer by this indulgence: and, it does not appear, whence suffering or danger in any shape can come: as to the individuals in question, the advantage, in various shapes, to them is obvious and out of dispute.

Instructional. Ratiocinative.

Art. 28. For distinction's sake, that is to say, for pointing, in a more particular manner, the eyes of the people upon the conduct of the Substitutes, and in this point of view upon that of their respective locators,—might it not be of use that they should wear some conspicuous habiliment? for example, across the shoulders a broad ribbon, on which are marked, in universally conspicuous letters, their official denominations?

Instructional.

Art. 29. So also, in the case of the Members of the proposed *Continuation Committee;* as to whom, see section 24, *Continuation Committee.*

Enactive.

Art. 30. On every day, on which the seat of any Member in the Assembly shall have remained vacant, neither the Deputy, nor any Substitute of his being on service,—notice of such absentation will, by the Registrar, be entered in the register of the assembly; and *placards* in sufficient number forthwith transmitted to the *Election Clerk* of the District, by whom they will be posted up on the outside of his official edifice, in conspicuous situations appropriated to the purpose.

Enactive.

Art. 31. If, within [7] days after such day of default, no *Excuse paper*, stating the inevitable cause of such vacancy, shall have been delivered in to the Registrar,—information of such further default will be transmitted by him to the Election Clerk in his District; and, at the same time, to the Election Minister, at the seat of the Assembly. On the receipt thereof, the Minister will forthwith transmit to the Election Clerk his mandate, ordering for the district in question, a fresh election. For the *excuses*, allowable on different occasions, for failure of attendance and other compliances where and when due, see the Procedure Code.

Enactive.

Art. 32. If an *Excuse paper*, as above, be delivered in,—the Assembly will, in the first place, pronounce as to the sufficiency or insufficiency of the excuse. In case of its insufficiency, the Legislature will give orders for a fresh election, as above; and as to the *Substitute*, who likewise will, in this case, have made default, it will either content itself with rendering the default universally known by appropriate publication, or in case of need proceed to punishment, as per section 28, *Legislation Penal Judicatory.*

Section XXIV.

Continuation Committee.

Enactive. Ratiocinative. Instructional.

Art. 1. Lest, by the exit of Members, by whom introduction or support has been given to useful arrangements, any such arrangement should, after proposal and acceptance, be lost or deteriorated,—as also lest the appropriate intellectual and active aptitude produced by experience should, by such secession, be rendered less than, without prejudice to appropriate moral aptitude,—to wit, to length of exposure to corruption from the Executive,—it may thus be made to be,—each Legislature, antecedently to its outgoing, will elect a Committee, the Members of which,—to the number of from [seven] to [twenty-one,] or more,—will, under the name of the *Continuation Committee*, under the direction of the Legislature, apply their endeavours, collectively or individually, in the next succeeding legislature, to the carrying on of the designs and proceedings of the then next preceding Legislature, in an unbroken thread.

Enactive.

Art. 2. Locable in the Continuation Committee is, in each year, not only every Member of the outgoing Legislature, but every Member of the Continuation Committee, serving in that same Legislature. Thus may any person serve as a Continuation Committee-man for any number of successive years.

Enactive. Ratiocinative.

Art. 3. A Continuation Committee-man has, for the above purpose, on every occasion, right of argumentation and initiation, or say of speech and motion: but, not having been elected by the people, he has not a vote.

Enactive.

Art. 4. Subject to any such alteration as

the Legislature may at any time think fit to make, the pay of a Continuation Committee-man is the same as that of a Deputy.

Ratiocinative.

ART. 5. *Question* 1. Why make provision for the continuation of proceedings, which, having been commenced under one Legislature, would otherwise have been dropped, for want of being continued under the next?

Answer. Reasons. I. If for this purpose, no provision were made, useful arrangements, to the importance, extent, or number of which no limits can be assigned, may experience a delay, to which also no limits can be assigned. Say *Time lost.*

Ratiocinative.

ART. 6. II. Others, of which at the time the need may in any degree have been, or even may continue urgent, may, by some temporary accident, be prevented from even being so much as proposed. Say *Good measures lost.*

Ratiocinative.

ART. 7. III. In whatever instance, in the hope of consummation, proceedings, having been instituted, have by the extinction of the Legislature been left unfinished,—here is so much of the time employed in them consumed in waste. Say *Functionaries' time wasted.*

Ratiocinative.

ART. 8. IV. True it is—that, in this case, though the legislative arrangements, with a view to which the proceedings were commenced, have not taken place,—yet, in the course of these same proceedings, *information* more or less valuable will commonly have been obtained. But, on the other hand, in so far as information, elicited on behalf of a proposed arrangement, has not been accompanied with such information as, in case of completion would have been elicited in opposition to it—here comes a proportionable danger, that the information thus obtained will be more or less delusive. Say *Delusive information probabilized.*

Ratiocinative.

ART. 9. V. Arrangements, to the extent, number, and importance of which no limit can be assigned may,—in consideration of the length of time that would be necessary to the bringing to maturity the body of information necessary to constitute an adequate ground,—be precluded from being ever initiated, proposed, or so much as mentioned. The more extensive and important the arrangements, the more protracted the preparation will naturally be conceived to be: and the more protracted it is conceived to be, the more perfectly will all prospect of consummation be excluded. Say *Improvement prevented from being so much as conceived.*

Ratiocinative.

ART. 10. VI. The shorter the life of the legislative body, the greater the evil in its above several shapes. Under the present proposed Code, this life is limited to a single year; or, in case of necessity, produced by *distance* of some parts of the territory from the seat of legislation, to, at the utmost, two years; and, the greater this distance, the greater will naturally be the length of time necessary to give completeness to the information.

Ratiocinative.

ART. 11. VII. As the same Continuation Committee-man may be relocated by successive Legislatures in any number, there will be no limit but that of his life to the quantity of *experience* thus placed at their command.

Ratiocinative.

ART. 12. VIII. True it is—that, in the practice of nations, no instance of any such provision is adducible. But, the absence of it may, without difficulty, be accounted for by other suppositions than that of its needlessness: to wit, by the *vis inertiæ* of government, by the natural blind continuance in the course continued in by predecessors, and by sinister interest, and interest-begotten prejudice, on the part of rulers.

Ratiocinative.

ART. 13. IX. In the earliest ages, *printing* being unknown, *writing*—a jewel in the hands of the extremely few, *travelling* moreover unsafe and tedious, means of eliciting any such extensive body of information in a permanent shape were unattainable: in succeeding ages, when bodies having a sort of momentary and precarious share in legislation, were brought together, it was under the spur of temporary necessity for some one or two limited purposes:—commonly for no other but the obtaining a pecuniary supply: their convener, a Monarch, who, when once the purpose was accomplished, felt no motives for continuing, but the most irresistible ones for dismissing, as quickly as possible, such troublesome associates.

Ratiocinative.

ART. 14. *Question* 2. Why not give to the Members of these Committees the right of voting?

Answer. Reasons. I. To the purpose for which the institution is proposed, that right is neither necessary nor subservient: Servants, not fellow Masters, these functionaries stand in this respect on the same footing with *Ministers*, to whom speech and motion without vote is given, as per Ch. IX. MINISTERS COLLECTIVELY. Section 24, *Legislation—regarding functions.*

Ratiocinative.

ART. 15. II. Though, for the year during

which they serve as Deputies with votes, they will have been chosen by their proper Constituents,—they will not have been chosen, by those same or any other Electors, for any one of the succeeding years, during which the need of their services, in the character of *Continuation Committee-men*, may come to have place.

Ratiocinative.

Art. 16. III. For as much as, to the purpose in question, it may be necessary that the number of them should not be fixed,—the consequence is—that if they had votes, the power of keeping the number of the Members of the Legislature in continued fluctuation would be, in case of such non-fixation, possessed by whatsoever authority they were located by.

Ratiocinative.

Art. 17. IV. Supposing, as above, the right of voting not imparted to them,—they may, without difficulty or ground of objection, be located by their own colleagues, who, on this supposition, are, as will be seen, their only apt locators.

Ratiocinative.

Art. 18. *Question* 3. Why thus give to their colleagues the location of these functionaries?

Answer. Reasons. I. In the possession of these their colleagues will be the best evidence, whereon to pass judgment on their appropriate aptitude in all its branches: and in particular in the intellectual and the active, being those which, in their instance, are principally in demand: while, by their non-possession of the right of voting, will be obviated all danger and objection, on the score of any such deficiencies of appropriate moral aptitude, as might otherwise be the result of their length of continuance in office: a length which, after this precaution, may without danger be maximized. Influence of will on will, none: influence of understanding on understanding will be their sole influence.

Ratiocinative.

Art. 19. II. In the possession of these their colleagues alone, will moreover be the evidence, whereon to judge of the nature and probable quantity, of the business for which their assistance will be needed, and thence of the number of them which that business may require.

Ratiocinative.

Art. 20. III. The choice of Committee-men out of their own associates has, by universal need, been rendered the universal practice, on the part of the legislative and other numerous bodies.

Ratiocinative.

Art. 21. IV. Take here for emblem Sisyphus and his stone. Sinister policy joins with ignorance and heedlessness in perpetuating the useless torment. The *Continuation Committee system* applies to the stone a *board*, which detains it at its maximum of elevation, and the next impulse given to it lodges it on the desired eminence.

Section XXV.

Relocable who.

Enactive.

Art. 1. No person who, for any District, has sitten as a Member of the Legislature, can, for that or any other District, be in that situation, relocated, unless, and thence until, of the persons who have served as Members, there exists at the time, a number thrice [or twice?] as great as that of the whole number of the Members, of whom the Legislative Body is composed.

Enactive.

Art. 2. For the ascertaining, on each occasion, the existence of this necessary number, it will be among the functions of the Legislation Minister, having before him the list of the Members of the Legislature, to keep account, and for the several years to mark off, as the occurrences take place, the several quondam Members, who, by death or otherwise, have become *definitively* unrelocable.

Enactive.

Art. 3. For *reasons* for Art. 2, and for the locability of a Member in the Continuation Committee of the next year, see section 24, *Continuation Committee.*

Ratiocinative. Instructional.

Art. 4. A position, upon which the here-proposed arrangement is grounded, is—that, without non-relocability—and *that* for a term sufficient to present to the Electors two sets at least of competitors, the number of whom, when added together, shall be little or nothing less than the double of that of the situations to be filled,—any supposed opening, for improvement or correction of abuse, will be but illusory: for that, unless it be in a number insufficient to produce any effect, the set of men located at the first Election will, to every practical purpose, continue in place, on all subsequent Elections; just as they would have done had there never been any Elections by which they could be dislocated.

Ratiocinative. Instructional.

Art. 5. If the number of persons capable of being competitors be short of this,—all the effect, produced by the elimination and election process, will be,—the adding to the original number of the acting managers, a certain number of dormant ones, who will be all along sharers in the latent profits of the power, without being sharers in the responsibility attached to the open exercise of it.

Expositive. Instructional.

ART. 6. Joint proprietors of a fund, for whatever purpose established, suppose an indefinite and ever-changing number, having for its limits the original number of the transferable shares. Number of original managers during the first year of the institution, say, for example, twenty-four: of these, eighteen stay in, without re-election; six only go out, and that of course, the first year, giving place, consequently, to six new ones, and so in every succeeding year. Of this arrangement, what is the result? *Answer:* Every year after the first,—total number, instead of twenty-four, thirty: whereof, twenty-four in possession: six others in expectancy only, but that expectancy sure. Thus is the election no more than an empty show: no proprietor, besides the six managers in expectancy, seeing any the least chance of his being elected, should he offer himself: accordingly, no such offer is ever made: whole number—thirty—revolve in a cycle, consisting of a short arithmetical *repetend* in the form of a *circulate*.

Exemplificational. Instructional.

ART. 7. In every instance in which the sort of arrangement in question has place, the truth of this theory stands demonstrated by experience. Witness the case of the *East India* Company: witness that of the *Bank of England* Company: witness that of the several *minor* companies, too numerous for enumeration, which have been organized upon the model of those two gigantic ones.

Exemplificational. Instructional.

ART. 8. In the case of the City of London, and its governing body, the *Common Council*, it stands exemplified, and receives a still stronger confirmation: in that case, the seats—not merely in a small proportion, as above, but the whole number—are at all Election times open, and the Elections have place in every year: yet, in the whole number, rarely indeed, except by death or resignation, does any change take place. Of this stagnation, what is the consequence? *Answer:*—What it cannot fail to be anywhere: imbecility, corruption—inaptitude in a word in every shape, comparison laid with the aptitude which might securely be substituted to it, by the here-proposed all-comprehensive temporary non-relocability system: and assuredly not at any less price.

Instructional.

ART. 9. For proof or disproof of this same position, the case of the Anglo-American United Congress, with its *House of Representatives and Senate*, presents another obvious and proper object of reference. But, in that case, circumstances occur which would render the examination tedious, and the result undecisive. The case is *there* a complicated one, complicated with that of the general system of government and state of society in other particulars: and where simple cases are sufficiently decisive, it would be lost labour to dwell on complicated ones: it would not have been mentioned but to show that it has not been overlooked.

Instructional.

ART. 10. For the same reason, nothing more is here said of the French Chamber of Deputies, under the Charter, with its provision for the annual elimination of one-fifth.

Instructional.

ART. 11. The same reason will serve for similar silence, on the present occasion, as to the case of the English House of Commons.

Instructional.

ART. 12. In conclusion, where for each situation, there are not at least two candidates, standing upon tolerably equal ground, all appearance of choice is, in a greater or less degree, illusory.

Instructional.

ART. 13. The contrivance has for its model that of the Juggler. Holding up a pack of cards, with the faces to the company,—"*Young gentleman,*" (says he to one of them) "*fix upon which you please;*" care being all the while taken that one and one alone shall be in such sort visible, as to give determination to choice.

Ratiocinative.

ART. 14. *Question* 1. Why, during the time proposed, or for so much as any one session, exclude all persons who have served as Deputies, from serving again?

Answer. Reasons. I. Because from undiscontinued relocability, evil effects naturally flow, as will be seen, in all shapes.

Ratiocinative.

ART. 15. II. To the public, whatever good could be expected from undiscontinued relocability, and undiscontinued relocatedness in consequence, is ensured, with addition, and without any evil, by the *Continuation Committee* institution, as above.

Ratiocinative.

ART. 16. III. As to individual Deputies, no evil in any shape would be produced—no pain of privation—no disappointment: since no sooner did any one of them look to the situation, than the limits to his continuance in it would meet his eyes. True it is, that, in the case of a person whom the commencement of the authority of this Code might find in the possession of the situation in question, the exemption from uneasiness would not have place: and from this circumstance a proportionable obstruction to such commencement could not but reasonably be expected.

Ratiocinative.

ART. 17. IV. As to the evil effects from

undiscontinued relocability, they have for their immediate cause the probabilization of relative inaptitude in all shapes, on the part of the relocated functionary.

Ratiocinative.

Art. 18. V. First, as to the inaptitude correspondent and opposite to appropriate aptitude in all shapes taken together. Under the circumstances in question, the undiscontinued relocability wants very little, scarce anything at all in effect and practice, of being tantamount to location for life: in the eyes of Electors in general, as well as their Deputies, *non-re-election* will have the effect of *dislocation*. The Deputy who has served his one year has, at the Election of the second year, possession to plead, and his services that have been performed in the course of that same first year. Be those services ever so slender, no equal plea can be put in by a competitor, who not having served at all, has not had the possibility of rendering any such services.

Ratiocinative.

Art. 19. VI. Next, as to *moral* inaptitude in particular. In the natural course of things, this disqualification, so far as it is constituted by corruptedness, will be universal. *Corruptees*, these same relocated Members: *corruptors*, with or without design, in the superior regions, the two great givers of good gifts—the *Prime Minister*, and the *Justice Minister:* in the inferior regions, the leading men among each deputy's electors.

Ratiocinative.

Art. 20. VII. *Matter of corruption*, the aggregate of these same good gifts, attached to the several official situations, as to which they are locators: elements of this aggregate —Contents of this *cornucopia*, money, money's worth, power, (power of *patronage* included,) and reputation, comprising whatsoever *dignity*, or say *distinction*, stands inseparably attached to these same situations: the two other ingredients in the official *cornucopia* of a Monarchy—to wit, *ease* at the expense of *duty*, and *vengeance* at the expense of *justice* being, it is hoped, excluded pretty effectually from that of the present proposed Constitution, by various appropriate arrangements, pervading the whole texture of it.

Ratiocinative.

Art. 21. VIII. *Efficient cause* of corruption in this case, expectation of the eventual receipt of some portion or portions of that same matter, in case of compliance with the several wills, declared or presumed, of the corruptors.

Here, as elsewhere, let it never be out of mind—it is not so much by the actual receipt of these objects of desire that the corruptedness is produced, as by the eventual expectation of them: for by the receipt in one instance, it is not produced any otherwise than in so far as receipt is necessary to engender and keep alive expectation in other instances.

Ratiocinative.

Art. 22. IX. Corrupt*ees*, *per contrà*, those same corrupt*ors* above-mentioned. Elements of the matter of corruption in their situations —1. Increase of power; 2. Diminution of responsibility—*restrictive*, or say *refrenative*, responsibility.

Ratiocinative.

Art. 23. X. Thus in the *superior* regions: in the *inferior* regions, Corrupt*ors* the *leading* men among the Electors: matter of corruption, the benefit of their influence with those their colleagues. Corrupt*ees per contrà*, those same leading men. Elements of the matter of corruption in their situation: 1. Such portions of the matter of corruption as are of too little value to be objects of concupiscence to the Deputies for themselves or their connexions: 2. Gratification, from courtesy and flattery received and expected from their Deputies, in consideration of the support received or expected: 3. Benefit to the particular local interest, or supposed interest, of the District they belong to, at the expense of the general interest of the State.

Ratiocinative.

Art. 24. XI. Correspondent *per contrà* corrupt*ees* in this case, these same corrupt*ors*. Matter of corruption in this case, 1. at the hands of the eventually re-elected Deputy, expectation of good things of minor value, not good enough to be worth the acceptance of Deputies or their connexions, and thus obtainable from the favour of the above-mentioned Arch-corruptors: 2. Expectation of courtesy and flattery at the hands of these same Deputies, in return for the favours looked for by them, as above. As to the good things just mentioned, the original source from which they will in great part, perhaps in most part, be looked for, is the favour of the *Arch-corruptor* above-mentioned: the channel through which they will be regarded as flowing, being the favour of the several also above-mentioned *Sub-corruptors*.

Ratiocinative.

Art. 25. XII. Under the influence of this corruption, the greater number of the members will naturally be found belonging to one or other of two classes: those who have nothing but *votes* to sell, and those who, besides votes, have *talents* to sell. As to comparative *prices;* of the *vote-seller*, the price will not deviate much from uniformity: of the *talent-seller*, the price will not only rise above that of the *vote-seller*, but swell to an amount to which no determinate limit can be assigned: no limit other than that which bounds the aggregate value of all that the above-mentioned *arch-givers* of good gifts have to bestow,

and *that* which, for himself and his connexions of all sorts, the Deputy in question is capable of receiving. As to the *talents*, they may be distinguished into talents for *speaking* and talents for *management*. As between these, the highest price will, in general, be obtained by the talents for speaking, these being at once the more rare, and by much the more conspicuous.

Expositive. Instructional.

ART. 26. Thus, on this part of the *moral* world, is the *attraction of corruption* not less universal than the *attraction of gravity* in the *physical* world: and, in the present case, every year, the cohesion of which the matter of corruption is the cement, will be closer than in all former years.

Expositive. Instructional.

ART. 27. As is the blood of man to the tiger who has once tasted of it, so are the sweets of office to the functionary who has once tasted of them. Seldom by anything but hopelessness of re-enjoyment will the appetite be extinguished.

Instructional.

ART. 28. But, though the power of the matter of corruption is naturally thus efficient, some length of time, different according to idiosyncrasy and other circumstances, will be necessary to the production of the effect: for, though, for the formation of the virtual contract, converse and particular explanations between the parties may be unnecessary,—not so such means of acquaintance with one another's dispositions as are requisite to form a ground for practice; and, for the obtainment of this information, a certain length of time is generally necessary. Hence, in the antiseptic regimen, one general rule. In the case of every two functionaries whose situations operate upon each other with a corruptive influence, *minimize the time of contact*. But for this resource, all endeavours to obviate the contagion might be hopeless: but, this resource being at command, the case is by no means desperate.

Expositive. Instructional.

ART. 29. Emblem, the *red hot roller*, under which, for smoothing, a stuff is passed without injury. Allow to the time of contact a certain increase, the stuff is in a flame.

Instructional.

ART. 30. Of the principle here in question, ulterior application will be seen made, in so far as the nature of the case admits; and in particular in the Judiciary department. See Ch. xii. JUDICIARY COLLECTIVELY, section 17, *Migration*.

Instructional.

ART. 31. Though, to the extent to which it is applicable with advantage, the principle has not perhaps been applied in any country,—there is not perhaps any in which, more or less application has not been made of it.

Instructional. Ratiocinative.

ART. 32. Of the sole reason for the undiscontinued relocability system, on the ground of *utility*, the essence is contained in the word *experience*. But, on the occasion here in question, the idea commonly attached to this word wants much of being clear or sufficiently comprehensive.—*Experience* is applicable to two different situations—1. To that of the Deputies; 2. To that of the Electors. On this occasion, that of the Deputies seems to have been the only one commonly thought of. Moreover, on the occasion of the application thus made of it, the idea attached to it seems to have been vague and indeterminate. To fix it, the expression must be changed, and to the indeterminate expression *experience*, the so thoroughly determined expression, *appropriate aptitude*, substituted. Now, to the most important branch of appropriate aptitude, namely, the *moral*, the system in question has just been shown to be not only not favourable, but positively and highly adverse. Remain the two other branches of the aptitude, namely, the *intellectual* and the *active*. True it is, then, that, considered apart from the moral, to these it cannot but be acknowledged to be, generally speaking, favourable: but, in the *moral* branch suppose a deficiency, any increase in these two branches, so far from raising the degree of aptitude, taken in the aggregate, may, as has been seen, lower it.

Instructional.

ART. 33. Here, then, comes in one great use of the *Continuation Committee:* to the Members, as such, the right of speech and that of *motion* being alone given, and that of *voting* being discarded. Thus it is—that, by means of this engine, a supply of intellectual and active aptitude may be kept up, without any the least diminution of moral aptitude; a supply, and *that* susceptible of increase, as long continued as any which, by undiscontinued relocability and relocation, could have been provided at the expense of moral aptitude.

Instructional.

ART. 34. After all, where, on this occasion, *experience* is ascribed to the situation of the functionary in question, of what qualification, on his part, under that name, can there be any reasonable assurance? From his merely filling the situation, if *that* be all, nothing can be inferred; and, unless this or that individual be in view, this is all that can, on any sufficient grounds, be affirmed. Upon the *attention* bestowed upon the business to which his situation puts it in his power to apply his mind, will depend whatever aptitude he may possess in either of the two branches; take away the

attention, the experience amounts to very little: that is to say, to the present purpose: for another there is, as will be seen, with reference to which this *little* will be considerably better than nothing.

Exemplificational. Instructional.

Art. 35. For an example, look to the *English* Legislative Assemblies, and in particular to the *House of Lords*. Here you may see beyond all doubt possession of the situation, possession on the part of hundreds, and on the part of each unit, whatsoever *experience* the possession cannot fail to give. Look at this experience, and then see what, in the case of the vast majority, is the produce, in the shape of any one of the branches of appropriate aptitude.

Instructional.

Art. 36. Remains now the *experience* considered as desirable in the situation of the *Electors*: experience as to comparative aptitude, as between Candidate and Candidate. As to this, see the next Article.

Ratiocinative.

Art. 37. *Question* 3. Why not render the *non-relocability perpetual?*

Answer. Reason. That, for the choice of the Electors of each District, there may be, in a state capable of being, and not unlikely to be, competitors with each other, two persons at least,—of whose comparative appropriate aptitude in future, as to the situation in question, the Electors have had the means of judging, from observations made of their respective degrees of appropriate aptitude, in and for that same situation, as therein already manifested; which men may accordingly, relation had to that same situation, be termed *tried men*: and, in respect of the interest which the observers have had in the accuracy of the observation, the conduct of their Deputies being thus the concern of the Electors,—the Electors may thus, in the words of the common phrase, be said to have had *experience* of it. Suppose the relocability to have place from the first, —they would, as above, (vacancies by death, resignation, or the extremely rare case of dislocation excepted,) seldom have any to choose out of but the original stock; in which case, the Election process would be of little or no use: suppose no relocability to have place at any time, they would have no *tried men*—in the above sense of the word *tried*—to choose out of.

Instructional.

Art. 38. In the instance of each Deputy, after one year of service in that situation, for how many years shall his non-relocability therein continue? The choice seems to be between *two* years and *three* years. The country not being *a given quantity*, materials constituting a sufficient ground for a decisive answer, are not, it should seem, to be found. The following considerations will present to view the difficulty, and at the same time a circumstance which lessens it.

Instructional.

Art. 39. Make the interval of non-relocability too long, the danger is—1. That the chance or even the assurance, of repossessing the situation, will not be sufficiently attractive: the minds of those who would otherwise have been competitors, will have been turned off to other pursuits; 2. Moreover, the State will for so long have remained debarred from the benefit looked for, from the giving to the electors the choice as between men called *tried men*, as above. Note, however, that, supposing no failure in the number of these peculiarly apt competitors,—this effect extends not beyond the *preparation period*:—the first year, reckoning from the day of the adoption of the Constitution here proposed.

Instructional.

Art. 40. As to the circumstances, by which the difficulty is *lessened*, it consists in the multitude of situations which, in the instance of each such temporarily dislocated Deputy, will, under this Constitution, be open to his desires.

Instructional.

Art. 41. 1. In this one supreme legislature, there will be seen, as per Ch. v. Constitutive, section 2, *Powers*, a multitude of *Sub-legislatures*, exercising, each of them, though to less local extent, most of the functions of that one. In the Supreme Legislature suppose, by the Deputy in question, no more than a moderate share of appropriate aptitude manifested, and *that* for no more than one year—such manifestation made in such a place, cannot but be expected by him, and with reason, to operate as a powerful recommendation: particularly, that body of appropriate *information* considered, which, even though no outward manifestation of his having received it shall have happened to be given, cannot fail to have presented itself to his notice.

2. Ministerial situations, immediately under the Supreme Legislature, and thence under the Prime Minister. True it is—that, in these, the openings will be so few,—and the qualifications which will be found necessary, so rare, —that the number, by whom, for the present purpose, their situations can be looked to as a resource, will be proportionably small. Though the number of those same situations is thirteen,—whether for the filling them so large a number of persons will be necessary, will depend on local circumstances: and, in these same situations, instead of *temporary non-relocability*, the nature of the case will be seen to require *perpetual continuance*, saving special causes of dislocation. As to these Ministers, see Ch. xi. Ministers severally.

3. Under each Sub-legislature, a set of Sub-ministerial situations, wanting little of being

equal in number to the above-mentioned *Ministerial* ones.

4. Situations in the *Judiciary*. In each *Immediate Judicatory*, four situations,—no one of them, with reference to the ex-functionaries in question, beneath acceptance. So likewise the same number in each *Appellate Judicatory*. True it is—that it will not be till a considerable time after the commencement of the constitution, that this resource will be open to them: nor then, except on the supposition of their having passed through the appropriate *probationary period*, and thereupon migrated for the time from the Judiciary into this transitory situation. As to this, see Ch. xii. JUDICIARY COLLECTIVELY. Section 28. *Locable who.*

Instructional.

ART. 42. On the first establishment of a Constitution, which is as much as to say on the first formation of a new State,—the people find themselves under a dilemma. *Experience* of the character of public men, with a view to their location in the several efficient situations, is at the same time pre-eminently desirable, and necessarily deficient; accordingly, *that* is the state of things, wherein arrangements, for stocking the establishment with such appropriate experience, are most needful. But, at that same period, men, in any tolerable degree possessed of appropriate aptitude will be most rare: and, at the same time, the need of appropriate aptitude for these same situations the most pressing. In this state of things, if on the part of the set of men first located, a degree of appropriate aptitude should chance to be possessed, sufficient for carrying on in any way the business of government,—the higher the degree of that aptitude, the greater may be the risk incurred, by the substituting, to the men by whom such appropriate experience has been had, other men *by* whom, and *of* whom, no appropriate experience at all has been had.

Instructional.

ART. 43. Exception made of the case of the new Republican States, sprung peaceably, as if in the way of child-birth, out of already established parent states, under the Anglo-American Confederacy,—new Republics will not have been seen formed, otherwise than by the complete subversion or dismemberment of Monarchical, Aristocratical, or Monarchico-Aristocratical Governments. But, it is only in consequence of an excessive degree of palpable misgovernment, (the case of England and its emancipated Colonies excepted,) that any such revolution has ever yet taken place: and, of such bad government, one never-failing effect has been—the rendering the people, in a degree proportioned to the badness of it, unapt for the business of government. When the power has come into their hands, appropriate aptitude, intellectual and active, sufficient for the throwing off the yoke of the old bad government, and for the formation of a new government, has indeed had place among them, by the supposition. But, in conjunction with this necessary existing *minimum* of *intellectual* and *active* aptitude, slight indeed is the degree of appropriate *moral* aptitude which, as above, can have had existence. As to *that* which consists in the being desirous of giving to the people at large the benefit of such degree of appropriate intellectual and active aptitude as the individual in question possesses, instead of giving that benefit exclusively to himself and his own particular connexions,—the total absence of it may not be inconsistent with a degree of intellectual and active aptitude, sufficient for the institution, and even for the continuance, of a government in the hands of the set of functionaries first located.

Instructional.

ART. 44. Of this state of things, exemplifications are but too abundant; and too notorious to need specifying.

Instructional.

ART. 45. Of this same state of things, one consequence is, that, in regard to the points here in question, scarcely can any arrangement be proposed, which does not lie open to objections,—and such objections as,—if considered by themselves, and without regard to the objections to which every arrangement differing from it stands exposed,—might not unreasonably be regarded as decisive.

Instructional. Ratiocinative.

ART. 46. Under these circumstances, of the two opposite risks, one or other of which cannot but be incurred, *that* incurred by *undiscontinued relocability* presents itself as the greatest; *that* by *temporarily discontinued locability*, as the least. Under undiscontinued locability, relocation of by far the greater number has been seen to be highly probable. Thus would it be, at the very next Election after that by which they were seated for the first time: and, whatsoever were the degree of their firmness in their several seats on the first re-election, at the time of every fresh election it will have received increase. But, in every situation, with length of possession, the appetite for power, far from experiencing diminution, experiences increase; and, in the situation here in question, while the appetite is thus receiving increase, so is the facility of gratifying it: to wit, from the strength, so necessarily given by habitual intercourse, to the connexion of those Members of the Supreme Legislative Assembly, with the unavoidably so constituted arch corruptors—the givers of good gifts—the respective heads of the *Administrative* and the *Judiciary* Departments, more especially of the *Administrative*. The consequence, if not absolutely certain, at any rate but too highly probable, is—a gradual but regular progression from a Representative Democracy to a Mon-

archicho-Aristocratical form of Government, working by fear and corruption, and thence to a Despotic Monarchy, with its standing army, working by fear alone, without need of corruption: everything going on from comparatively good to bad, and from bad to worse, till the maximum of what is bad is reached, and, bating the chance of a violent revolution, perpetuated.

Instructional.

Art. 47. Such, for example, was the course in which, at the time of the English Civil Wars, the Parliament, in conclusion called the *Rump Parliament*, had, at the time of its forced dissolution, been running, in consequence of the perpetual non-dislocability, which,—with intentions probably at the outset as patriotic at least as any which in any such situation were ever entertained,—the original members had succeeded in obtaining for themselves.

Instructional.

Art. 48. On the other hand, under the *temporarily discontinued relocability system*, if with a legislature composed, each year, of an entire new set of Members for three or even two years, the Government can but maintain itself in existence,—appropriate experience, on the part of Deputies and Electors, will go on increasing: *corruption*, to an extent capable of producing evil in a tangible shape, will, by means of the *securities* here provided against it, be excluded; and what change there is will be from good to better and better. For, by this change in the composition of the Supreme Legislature, no change as to the individual at the head of the *Executive* will be necessitated or so much as probabilized; and in him will be the powers of *location* and *dislocation*, as to all the other official situations, in which the business of Government is carried on.

Instructional.

Art. 49. As to the just mentioned *securities*—those which apply to the situation of the head of the Administrative Department—the *Prime Minister*,—in this way will be seen to operate—not only those which are placed in the Chapter denominated from that high functionary, but those also which are placed in the Chapter headed Ministers collectively, (Ch. ix.); namely, in section 15, *Remuneration*, section 16, *Locable who*, section 17, *Located how*, section 25, *Securities*, &c. For although, in a more direct and manifest way, they will be seen bearing upon the situations of those his several locatees, immediate subordinates, and dislocables,—yet, by the *limits* they apply to his choice when filling those several situations, and the *checks* they apply to the powers exercised by these his instruments, those securities, the application of which may, to a first glance, appear confined to *those* situations, may be seen moreover to apply, all of them, in effect, to *his*. But, neither do these, nor any others which could be added, bear upon the situation of Deputy, commissioned by the Electors to act in their behalf in that Supreme Legislative situation, which, as per Ch. iv. Authorities, is the Supreme *Operative*. All *locators* subordinate to the Members of the Legislature,—and at the head of them the head of the Administrative Department,—are responsible, *legally* as well as *morally*, as for all other exercises of their authority, so for every *choice* it falls in their way to make. Upon the situation of the *Deputies of the people*, no *legal* responsibility can attach, other than that which is constituted by the extraordinary and difficultly applicable, though indispensable, remedy, applied, should it ever be applied, by *dislocation* exercised at their charge by their respective *Electors*: upon the situation of the Electors *themselves*, neither can any *legal*, nor so much as any *moral* responsibility attach, consistently with the altogether indispensable freedom of their choice.

Instructional.

Art. 50. Meantime, in every situation, *moral* aptitude will depend upon the influence exercised by the Public-Opinion Tribunal, as will the efficiency of that influence upon the degree of liberty possessed by the press; and, under the best possible form of government, the sufficiency of that liberty will be in a lamentable degree dependent upon the particular structure of the minds of those in whose hands the reins of Government happen, at the outset, to be placed. The *Anglo-American States*, now so happily confirmed in the possession of a form of Government, the only as yet fully settled one, which, in an enlightened age, deserves the name of a Government—were for years within an ace of losing it. From 1798 to 1802, a law was in force, having for its object the saving the rulers, wherever they were, from the mortification of seeing any disapprobation of their conduct, expressed in terms, other than such as they themselves would approve of; and, by those who afterwards had the magnanimity to expose themselves to it, a trial, the severest, perhaps, that a man in power is capable of undergoing, was submitted to.

Instructional.

Art. 51. In England, by a mixture of magnanimity and weakness—in what proportion cannot as yet be known—the example, to a degree not less astonishing than laudable, has been for some time copied. In this, as in all cases in which tyranny has been relaxed, the danger is—lest, by gratitude, the people should be betrayed into a greater degree of confidence, than, even under the best possible form of Government, can find a sufficient warrant.

Ratiocinative.

ART. 52. Objections to the temporary non-relocability system, with answers.

I. *Objections.*	II. *Answers.*
1. By the non-relocability system, temporary as it is, freedom of choice is, for the time taken away.	1. Of no use is freedom of choice, otherwise than as a security for appropriate aptitude on the part of the object of the choice. But, until the proposed term of non-relocability is expired, freedom of choice is not, (it has been shown,) conducive in any degree to the location of appropriate aptitude: it is, on the contrary, in a high degree conducive to the location of inaptitude; of inaptitude, as to every branch of appropriate aptitude. When the non-re-locability ceases to operate as a bar to aptitude, it is here removed.
2. To every irreproachable Member, dislocation from his situation—dislocation, and for so long a term, and without so much as any imputation of misbehaviour, will be productive of suffering, and *that* unmerited.	2. Productive of suffering! Yes, if unexpected, and thence he unprepared for it: to wit, pain of disappointment. But, every one being completely prepared for it, no such suffering can have place. As his location cannot be effected without his own consent,—if upon the whole the enjoyment were not expected by him to be preponderant over all suffering, he could not be in the situation in which, by the supposition, he is.
3. Power, so small in respect of its duration, no person, endowed with adequate appropriate aptitude in all its several branches, would vouchsafe to accept.	3. Yes: persons in abundance. Even supposing the situation of Member of the Legislature led to nothing else, instances of situations which, though much less desirable, are objects of extensive competition, may be seen in every state. But, over and above the facility for obtaining, at the hands of Ministers, desirable situations for his friends, an advantage, the complete prevention of which, how desirable soever, is impossible, is—that the seat in the Legislature is a stepping-stone into divers other seats: to wit, 1. In the Continuation-Committee; 2. In the next Sub-legislature; 3. At the expiration of the non-relocability term, a seat in the Legislature, and thence again into a Continuation-committee.

Instructional. *Ratiocinative.*

ART. 53. Comparative view of the undiscontinued locability and the temporary non-relocability system. Upon the whole, as between the temporary non-relocability system, coupled with the Continuation-Committee Institution on the one part, and the undiscontinued relocability system on the other, the points of comparison may be summed up as follows:—

I. Temporary non-relocability and Continuation-Committee System.	II. Undiscontinued re-locability System.
1. By the prospect of a situation in the Committee,—it secures, on the part of all apt Members, together with the desire of that situation, prospect of competition; thence exertion, and by exertion, maximization of appropriate aptitude in all its branches.	1. No such prospect, no such motive for exertion: for the being re-elected, the negative merit of not having given offence to individuals will, on the part of a great majority, suffice.
2. The term of non-relocability expired, it secures, in a number proportioned to the length of the term, *tried men*, out of whom, on the election of Members of the Legislature, the Electors will have their choice: and at the same time opens the door to men as yet untried, who, under the other system, would have regarded it as shut.	2. On no occasion, unless by accident, and *that* not likely to be frequent, does it admit of the non-relocation of the person once elected, howsoever unapt: nor accordingly does it lay open the choice.

3. It keeps on foot a select body of appropriate political *watchmen* without doors, engaged by interest in their quality of leading Members of the Public-Opinion Tribunal, to keep watch on the conduct of their rivals and future competitors—the Members of the Legislature in the several years.

3. It provides no such security for appropriate aptitude, in any shape, on the part of the Members of the Legislature.

4. It secures for the Sub-legislatures a supply of appropriate aptitude, such as they could not, by any other means, be provided with.

4. It affords no such supply.

5. It thereby affords to the Legislature a probable supply, more or less extensive, of functionaries, who, to the stock of national knowledge and judgment, acquired in the Legislature, have added a stock of local knowledge and judgment, acquired in Sublegislatures.

5. No such supply.*

Ratiocinative.

Art. 54. *Question* 1. Why, to the security provided in section 20, *Attendance and Remuneration*, for each day's attendance, by forfeiture of that day's pay, add the further securities in this present section provided?

Answer. Reasons. Against non-attendance on particular days, not only the mere loss of those days' pay, but even the utmost penal security applicable in a pecuniary shape, would necessarily be insufficient: inadequate would be not only the mere withdrawal of remuneration, but any positive *fixed mulct* that could be applied. To men of a certain elevation in the scale of opulence, a pecuniary *punishment* that might generally even appear excessive, would even operate as a *licence:* to some even as an object of mockery. In this case, therefore, as in every other for securing compliance, no instrument other than *punishment*, in such amount as to be sure of operating in that character, and in such sort as to outweigh the utmost profit by the offence, could have been sufficient. Applied to the *Principal* alone, or the *Substitute* alone, even this sort of security could not be sufficient: by allegations, the falsity of which could not be sufficiently made manifest, either would be able to shift off the blame from himself, and fasten it either upon the other, or upon *accident*.

Ratiocinative.

Art. 55. *Question* 2. Intending to provide additional securities so much more efficient, and of themselves so sufficient, why commence with a security, the effect of which is thus precarious?

Answer. Reasons. I. As far as it goes, pecuniary punishment, in this mildest of all forms, is the most secure of execution that the nature of the case admits of; and, to a considerable extent, efficiency would not be wanting to it.

II. In the case of the several subordinate situations, it appeared indispensable: and to have withholden the application of it to this, would have been contributing to the propagation of mischievous delusion, by attributing to all men, to whom it shall have happened to be located in this situation, a needless and delusive character of peculiar dignity, independent of good desert.

Section XXVI.

Wrongful exclusion obviated.

Instructional.

Art. 1. The case of partial exclusion by force or fraud, or extraordinary accident excepted,—against deficiency in respect of *plenitude of attendance*, and thence risk of *fluctuation*, in legislative arrangements, provision, such as appeared sufficient, has been made, in and by former sections: viz. section 18, *Attendance*—section 19, *Remuneration*—section 20, *Attendance and Remuneration*—section 23, *Self-suppletive function*—section 24, *Continuation Committee*—section 25, *Relocable who*—remains, as a case calling for provision, *that* of a temporary deficiency, produced by one or other of the three just mentioned causes.

Enactive.

Art. 2. On each occasion, the authority belongs to the majority, of the Members then present, at the appropriate place of meeting.

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* Conceptions, to a considerable extent opposite to those which gave birth to the here-proposed arrangements, may be seen in a published letter of the author's to the then existing Portuguese Cortes Ann. 1821. Supposing *those* conceptions, and not *these*, erroneous,—a principal cause of the error may be seen in the want of an idea sufficiently clear, associated at that time with the word *experience:* a deficiency which, it is hoped, will on the present occasion be found supplied. Another cause is—that the idea of the *Continuation Committee* had not at that time, as yet presented itself; any more than *that* of extending, to the situation of Deputy to the Legislature, the principle of *self-supply*, which, having been originally suggested by the circumstances of the *Judicial department*, has been since extended to the Administrative, and now, last of all, that is to say, as late as the commencement of the year 1826, to the legislative department.

Enactive.

ART. 3. If, by force, artifice or accident, any Member or Members, who would otherwise have been present, have been prevented from being so, the proceeding is not, by any such impediment, rendered null and void. But, supposing the fact of such impediment established, and the case such, that the number so excluded would, had it been present, have composed, with the addition of that of the others, a majority on the other side,—a declaration to that effect will naturally be passed; and things will be placed, as near as may be, on the same footing, as if the Members, so excluded, had been present.

Enactive.

ART. 4. If the exclusion has had force or artifice for its cause, all persons, Members and others, intentionally concerned in the production of it, will, at the discretion of the majority, be compensationally, as well as punitionally and dislocationally responsible. As to this, see section 28, *Legislation Penal Judicatory.*

Enactive.

ART. 5. If, in the bringing about any such fraudulent exclusion, any Member, or other functionary, dislocable by the *Constitutive* Authority, has been purposely concerned, here will be another occasion for the exercise of its incidental dislocative, as per Ch. v. CONSTITUTIVE, section 2.

SECTION XXVII.

Legislation Inquiry Judicatory.

Expositive.

ART. 1. *By a Legislation Inquiry Judicatory*, understand a Judicatory, by which, on any particular occasion, by the hands or the authority of the Legislature, for the purpose of constituting a ground for its ulterior proceedings, and in particular for the enactment of a new law, *evidence* is elicited. To no other purpose does this Judicatory act. By this circumstance it stands distinguished from a *Judicatory* ordinarily so called: and by this circumstance alone are the powers and mode of proceeding distinguished from those, by which, in an ordinary Judicatory, a ground is made for definitive judication: as to these, see Arts. 16, 18, 19, 29, 30.

Enactive. Instructional.

ART. 2. By its own, or by other hands, the Supreme Legislature will give exercise to this branch of its power, according to the nature of each individual case.

Expositive.

ART. 3. By whichsoever hands exercised, the sort of function, exercised by exercise given to these powers, is termed the *evidence-elicitative function;* or, for shortness, the *elicitative function.*

Expositive.

ART. 4. *Principal*, or say *effective*, call the *purpose*, to which the *imperative*, (including the *enactive*,) function of the Legislature is exercised; *preparatory* or *preparative*, *that* to which the *elicitative* is exercised.

Instructional.

ART. 5. Correspondent to the *imperative* function in the exercise of *Legislative*, is that same function when performed in the exercise of *judicial* authority. In the one situation as in the other, on every occasion, it were (as will be seen in Art. 17) desirable, were it practicable, that of both functions—the *principal* and the *preparatory*—the exercise were the work of the same hands. But, of this desirable purpose, the accomplishment will, in the one situation as in the other, to a more or less considerable extent, be found impracticable. What remains is—to maximize the accomplishment of it, in so far as may be, without the introduction of preponderant evil from other sources.

Instructional.

ART. 6. Whether, without preponderant evil in other shapes, this preparatory function can be exercised by the hands of the Legislature itself, will depend—partly upon the quantity of its applicable *time*, partly upon the importance of the *occasion* and the *purpose*. On the occasion of each individual inquiry, it will depend—partly upon the presumable *importance* of the *result*, partly upon the quantity of *time* requisite for an adequate exercise of the *elicitative* function, partly upon the quantity of applicable time, which, at the moment, the Legislature has at its disposal, and not called for by *other purposes* of superior importance. But rare in the extreme are, as may have been seen, the cases, in which, for this subordinate purpose, any of the Legislature's applicable time can be spared. See section 1, *Powers and Duties.*

Instructional. Expositive.

ART. 7. Evidence *ready elicited*, evidence requiring to be elicited, or in one word say *elicitable*. Under one or other of these denominations will come whatsoever evidence can, on any occasion, need to be under the eye of the Legislature. Under the appellation of *evidence ready elicited*, comes the whole stock of that which, for all occasions together, for judicial and legislational purposes together, has been elicited and preserved. In consideration of this distinction, it has been characterized by the denomination of *preappointed* evidence.*

* See the Author's Work on *Evidence*, in vols. vi. and vii.—*Ed.*

Expositive. Instructional.

Art. 8. Of preappointed evidence, examples are as follow—1, The aggregate mass of *scriptitiously* expressed evidence, (as to which, see Art. 11,) composed of *exemplars*, of the several documents emanating from, or recorded in, the Register Books, belonging to the several offices contained in the official establishment of the State. These documents constitute the subject-matter of the *Universal Registration System*, as to which see Ch. viii. Prime Minister. Section 10, *Registration System*.

Expositive. Instructional.

Art. 9. 2.—In particular, the statements made and recorded under the care of *Local Registrars*, as per Ch. xxvi. Local Registrars. Section 5, *Death-recording*. Section 6, *Marriage-recording*. Section 7, *Birth-recording*. Section 8, *Maturity-recording*. Section 10, *Post-obit-administration-granting*. Section 11, *Property-transfer-recording*. Section 12, *Contract-recording*. Section 13, *Extrajudicial-evidence-recording*. Section 14, *Subjudiciary topographical function*.

Expositive.

Art. 10. *Oral* or *epistolary*—in one or other of these two modes or forms, will be elicited, whatsoever *evidence*, on the occasion and for the sort of purpose in question, requires to be elicited in the form of *discourse:—oral* the mode, where the signs employed are of the *evanescent*, and unless in the extraordinary case of muteness or deafness, of the *audible* kind: *epistolary*, where expressed by signs of the *permanent* kind made by the operation called *writing*, or the operations substituted to it—say, in one word, by *scriptitious* signs.

Expositive.

Art. 11. Note, that as to *elicitation*, it may, on the part of the *elicitor*, or say *elicitator*, be either *passive* or *active:* passive, in so far as the discourse brought into existence is delivered spontaneously, by him whose discourse it is: the elicitee being occupied with it in no other way than by *receiving* it: *active*, in so far as extracted from him by the elicitor, by means of questions, or say interrogatories, actual or virtual: in which last case the *elicitor* is *interrogator*, or say *examiner;* the person, to whom a question is addressed, *interrogatee*, or say *examinee*.*

For the elementary functions comprised in the *Evidence-elicitative function*, see title *Evidence* in the *Procedure Code*, (vol. ii. p. 57.)

Expositive. Instructional.

Art. 12. Considered in respect of its *source*, the evidence to be elicited may be distinguished into *personal* and *real: personal*, in so far as it consists of a portion of discourse, uttered, as above, by some *person: real*, in so far as it is afforded by the condition or appearance of some *thing* or assemblage of *things*, or by a *person* otherwise than by means of human action or *discourse*, as in the case of a wound or bruise sustained. Evidence, in the *scriptitious* form, is, in respect of the *things signified*, *personal;* in respect of the *signs*, *real*. So far as the evidence is, as above, *personal*,—he, whose discourse it is, may be termed a *testifier*, or say *testificant:* so far as it is *real*, the thing or *things* which are the *sources* of it, whether they belong to the class of *moveable* or to that of *immoveable* objects, will commonly be in the *custody* of some *person*. Spoken of with reference to the source of evidence so possessed by him, this person will be an *Evidence-holder*. To a person in either of those characters, or in both, may an authoritative mandate, issued for the obtainment of evidence —say an *evidence-requiring mandate*—be to be addressed.

Instructional. Expositive.

Art. 13. In so far as it is by hands other than those of the whole Legislature, that the evidence sought by it is elicited, or endeavoured to be elicited,—the hands by which it is thus elicited or endeavoured to be elicited, may be said to be those of a *Committee*, say an *Evidence-elicitation Committee:* as to which, see Art. 23 to 26.

Instructional.

Art. 14. 1. With what *powers;*—2, of what person or *persons* consisting;—3, at what time or *times;*—4, in what place or *places;* and under what *checks*, may the operations of this same Legislation Inquiry Judicatory be most aptly carried on?

Correspondent to the unlimitedness of the demand, must be the extent and variety of the provision, made under these several heads, for the satisfaction of it.

Enactive. Instructional. Expositive.

Art. 15. *Powers*. For procuring and securing attendance, whether at the seat of Legislation or elsewhere, for the purpose of oral examination,—the Legislature will, of course, possess, and upon occasion exercise, all those which, by this Code and the Procedure Code connected with it, are given to ordinary Judges: and to these it will add all such, if any, as, being necessary to no other purpose than that of Legislation, will not have been instituted for the purpose of Judicature: as, for instance, the giving, on this occasion and to this purpose, unlimited exercise, to the function of eliciting information through the hands of *Government Envoys* to foreign Governments, or Government. *Agents* of all classes, *resident* in the dominions of foreign Governments: so, of functionaries belonging to the *Army* and *Navy* Sub-departments, and serving at the time in distant local fields of service.

* In English practice, *the examinee* is, in some cases, preposterously styled *the examinant*.

Instructional.

ART. 16. In relation to *power* considered as applied, for the purpose of Legislation, to the extraction of *evidence*, or say *appropriate information*,—note here a *disadvantage*, under which *Legislation* lies, as compared with *Judicature*. The sort of *negative* information which is capable of being afforded by *silence*, in return for interrogation actual or virtual, being, to a comparatively inconsiderable, if any, extent, capable of being made subservient to the purpose of Legislation;—hence it is, that the Legislator finds himself destitute of the faculty of obtaining appropriate and requisite information, in cases in which, to a large extent, and with no small advantage, it is obtainable by the *Judge*. For, as in domestic, so in legal procedure, as in a non-penal, so in a penal case, highly instructive, as in domestic procedure no person can have failed to experience, is the information capable of being furnished by silence in the character of *self-condemning evidence*.

Instructional. Ratiocinative.

ART. 17. Though in no case for the *exclusion* of *deception*,—yet in all cases for the exclusion of *delay*, *vexation*, and *expense*, where *preponderant* over the evil of definite misjudication or non-judication, does the *Procedure Code*, connected with this present Code, interdict the extraction of evidence. To the extraction of evidence for a *Legislative* purpose, the limit, thus applied to the extraction of it for a judicial purpose, will not of necessity apply. For, by the choice which the Legislator has of places, times, and hands,—delay to the public service, and vexation and expense to individuals, may, on each occasion, be minimized. On the other hand, to the evil producible by *misjudication* or *non-judication*, there are limits, (and, by the authority of the Legislature, those limits are rendered narrow ones,) to the evil producible by *mislegislation* or *non-legislation*, none.

Expositive. Instructional.

ART. 18. Clearness, correctness, impartiality, all-comprehensiveness, non-redundance —thence instructiveness and *non-deceptiveness* —under one or other of these heads may be placed, it is supposed, whatsoever properties are desirable in the entire of a body of evidence elicited to form a ground for a proposed measure: *clearness*, that is to say, exemptness, as well from *ambiguity* as from *obscurity*: *impartiality*, that is to say, comprehensiveness, or say exemption from deficiency, as well as from incorrectness, in so far as those imperfections would respectively be productive of undue assistance to either side; all-comprehensiveness, for the sake of sufficiency of information and avoidance of deceptiousness, on the part of the effect: to wit, the effect produced on men's judgments by the whole body of the evidence: non-redundance, for the sake of *clearness*, and for saving of useless delay, vexation and expense, on the part of all persons interested.

Instructional. Ratiocinative.

ART. 19. In the case of the Procedure Code connected with the present Code, and for the purposes of judicature, the application made of the two following securities against deception by falsehood, is maximized. These are—

I. For the security of testimonial evidence scriptitiously expressed, wheresoever delivered, and whether spontaneously or responsively —against falsehood, as well *temeracious* as *mendacious*, responsibility, *satisfactional* as well as *punitional*, in the same manner as if the evidence had been delivered in the *Justice Chamber*, in the shape of responsion in the *oral* mode to interrogation in that same mode.

Enactive. Instructional.

ART. 20. II. In explanation, confirmation, or invalidation of any such scriptitiously delivered evidence,—the testifier, at all times, in case of need, subject to examination in the *oral* mode. See Procedure Code, title *Evidence*.— See also in this present Code, Ch. xxi. IMMEDIATE JUDICIARY REGISTRARS. Section 5, *Minutation how*. From neither of these securities will the Legislature fail to derive such benefit as, in each case, the nature of the case affords.

Ratiocinative.

ART. 21. For, seldom can the sufficiency of the securities afforded against deception,— whether by evidence, or *for want* of evidence, —be maximized, without the benefit of instant answers or silence in return to questions arising instantly out of preceding answers or silence, and the interpretation thereupon capable of being afforded—by tone, countenance, gesture, and deportment.

Enactive. Instructional.

ART. 22. On each occasion, the Legislature will constitute or distribute the Inquiry, in such manner as the exigency or convenience of the occasion shall be deemed to require. It will conduct the whole by its own hand, or the whole by other hands; or part by its own, other parts in any number by so many different hands or sets of hands.

Instructional. Ratiocinative.

ART. 23. The hands which, to the purpose here in question, the Legislature acts by, may, when any other than its own, be spoken of as being the hands of a *Committee*. Such Committee is capable of being made to consist either of a single person, or of persons in any number: but to every even, it will prefer any odd, number: for, otherwise, by the want of a casting voice, the whole operation or any part of

it, may at any time be stopped, and the Inquiry frustrated.

Expositive. Instructional.

Art. 24. By the appellation *Legislation-evidence Elicitor*, or, for shortness, *Legislation Elicitor*, or say *Legislational Inquest man*, understand a Committee man thus employed. In English practice, *The Grand Inquest of the Nation* is an appellation, by which the House of Commons has, on this occasion, been designated. *Inquisitor* would have been more commodious, but for the odious idea so indissolubly associated with it.

Enactive. Expositive.

Art. 25. A Legislational Elicitor, or say Inquest man, may be either a *Deputy*, or a person other than a Deputy: if a person other than a Deputy, either a person at large—or, according to a common phrase, say a person from *without doors*—or else a *Continuation Committee man;* he being, as such, though not a Deputy, yet, as per section 24, *Continuation Committee*, a Member of the Assembly.

Instructional.

Art. 26. An apt *Legislation-evidence Elicitor* may be any Judge Ordinary, Immediate or Appellative; and in both cases the Judge *Principal* or a Judge *Depute*, as to whom, see Ch. xiv. Judge Immediate Depute permanent: Ch. xv. Judge Immediate Depute occasional.

Enactive. Instructional. Ratiocinative.

Art. 27. If the Elector be a Deputy,—the *elicitation process* will not be carrying on, at any time of the day, at which the Legislature is sitting on Legislation business. Incompatible with the indispensable plenitude of attendence, as per sections 18, 20, and 26, would such exterior occupation be: during the whole of the time so occupied, the Deputy's Constituents in particular, and the State in general, would be deprived of the benefit of his service, on that part of the business, which is of intrinsic and superior importance. Thus, whether it were without or with his consent, that the occupation were allotted to him. Moreover, if without his consent, the power of location so applied might, in that case, be employed as an instrument of virtual expulsion for any length of time, and thereby as an engine of oppression and tyrannical dominion. And so in the case of a *Continuation Committee man.*

Instructional. Ratiocinative.

Art. 28. For obviating delay to the detriment of the public interest, and vexation and expense to individuals, by journeys to and fro, and demurrage for the purpose of oral examination,—the Legislature will have at its option the carrying on the inquiry into *different facts* or classes of facts by any number of *Elicitation Committees*, at any number of *places* at the same time.

Instructional.

Art. 29. On this occasion, for the maximization of *publicity*, it will feel itself at liberty, in the choice of an *edifice* for this purpose, to exercise powers such as might not belong to a Judge; as for example, taking any public or even, in case of necessity, any private edifice.

Instructional.

Art. 30. Only in so far as *confrontation* is necessary—necessary, to wit, to the discovery of relevant and relatively material truth, will persons more than one be convened from mutually remote places, to the seat of Legislature or elsewhither, to be orally examined at the same time.

Expositive.

Art. 31. *Purposes*, for which *confrontation* may be requisite, are *explanation, contradiction, counter-evidence.* By *counter-evidence* understand such evidence of an opposite tendency as may be delivered without contradiction opposed to anterior assertions.

Instructional.

Art. 32. In a case, in which conflict has place between divers particular interests,—an arrangement, desirable in so far as practicable, is—that the Elicitation Judicatory should consist either of a single person, approved by all parties interested,—or of divers persons, in number the same as that of the conflicting interests, and approved respectively by those several interests; with the addition of a Chairman, approved alike by all interests.

Instructional. Ratiocinative.

Art. 33. In the case of such conflict, it will commonly be found conducive to justice to allow to each interest its professional Advocate: care being taken to prevent such needless addition as might otherwise be made, by causing one and the same interest to be split in appearance into divers interests.

Instructional. Ratiocinative.

Art. 34. So, in case of a conflict between the public and this or that particular interest: care being taken that such allowance be not employed as an instrument of needless delay.

Enactive. Instructional. Ratiocinative.

Art. 35. Exceptions excepted, as per section 21, *Sittings public and secret;* as in an ordinary so in a Legislative Inquiry, publicity will be maximized.

Instructional. Ratiocinative.

Art. 36. The situation of *Judge* being *that* in which men will be in use to make due and appropriate distinction between ordinary cases and the few extraordinary ones, in which the

purposes of justice are best served by secrecy, so it be but temporary,—the Legislature will, on this consideration, incline to employ, as *Legislational Elicitor*, if acting singly, a Judge in preference to a person at large.

Instructional. Ratiocinative.

ART. 37. Cases, however, may occur, in which, where the obligation of secrecy is deemed necessary to be imposed, reason may be found for employing, for this purpose, a *many-seated* Judicatory, say a Judicatory of *three*, in preference to a *single-seated* Judicatory, filled by a Judge. For, against the temptation to apply to purposes of depredation or oppression, the power afforded by secrecy,—the greater number will afford a security not afforded by the lesser: each member of the secret tribunal, thus formed, being capable of giving eventual information against every other: and, any suspicion which might otherwise be entertained by the Public-Opinion Tribunal of sinister design on the part of a majority in the Legislature—may thus, by means of the greater number, be more effectually obviated.

Instructional.

ART. 38. To the conduct of the Legislature and the instruments employed by it in this business, as above,—will be seen applying the same *checks* as those which apply to it on the occasion of the exercise given by it to its peculiar Legislative function, as per section 31, *Securities for appropriate aptitude.* To the possessors of the *Constitutive* Authority, in their character of Members of the *Public-Opinion Tribunal*, it will belong—to keep an ever watchful eye on the conduct of these their servants, in such sort as to give maximization to the efficiency of those several securities.

Instructional. Expositive.

ART. 39. *Legislation Inquiry Report*, or, for shortness, say *Legislation Report. Methodization, condensation, application,*—by these terms may denomination be given to functions, by the exercise of which, after completion given to the exercise of the *Elicitation* function, an instrument of the sort thus denominated is framed: *methodization*, that is to say, placing one after another, in the order best adapted to *correctness, completeness*, and *clearness* of conception, the facts respectively *sought* in the character of *conclusions* from the aggregate body of the evidentiary matter elicited: and, in relation to each such conclusion, the propositions expressive of the evidentiary facts, or assemblages of evidentiary facts, regarded as constituting respectively a *ground* for these several conclusions: *condensation*, that is to say, collecting and expressing, by one general proposition, the propositions respectively expressive of a group of relatively particular facts: *application*, that is to say, pointing out in what manner the above-mentioned propositions, general and particular, contribute to the affording of the information sought by the whole inquiry.

A *Report* is the appellation by which, in *English* practice, a written instrument, occupied in the exercise of these functions is denominated. In the present instance, a Report thus occupied, may be termed, as above, a *Legislation Inquiry Report*, or, for shortness, a *Legislation Report.*

Instructional.

ART. 40. The need of *consistency* and *symmetry* considered,—seldom can such a Report be aptly penned, unless in the original concoction of it, it has been the work of no more than a *single* hand. Such, accordingly, is commonly the English practice. But, on any occasion, when once the instrument has been framed by some single hand, others in any number may be occupied with advantage in the making or proposing of amendments. And, on the supposition of a case, in which, between two or more portions, of the subject-matter of an inquiry made for a given single purpose, no other connexion has place,—for despatch or alleviation of labour, the drawing up of the Report may, of course, without prejudice to the design, be committed to that same number of different hands.

Instructional. Expositive.

ART. 41. Under this head, not inconsiderable is the light derivable, by any other nation from English practice.

Regularity elicited, and *occasionally*, or say, *incidentally elicited*, or about to be elicited,—to one or other of these heads may be referred whatsoever mass of evidence, applicable to Legislative purposes, is employable at any given point of time: *regularly* elicited, those masses which are furnished by the occurrences and state of things registered of course in the several offices: *occasionally elicited*, those which, for the purpose of some particular Legislative measure, have from time to time been respectively elicited, by the act of so many Elicitation Judicatories, on the several *occasions* constituted.

Instructional. Exemplificational.

ART. 42. In English practice, locators, on this occasion, have been each one of the three branches of the Sovereign authority—*King, Lords*, and *Commons:* such is the order in which the three authorities are, in general, mentioned. But, on the present occasion, it requires to be reversed. Authority the most *frequently* thus exercised, that of the House of Commons: next most frequently, that of the House of Lords: lastly, that of the monarch.

Instructional. Ratiocinative.

ART. 43. First, as to the House of Commons: and, in this case, first as to the *quality* of the particular object endeavoured at: next,

House of Commons is *not* in the practice of administering an *oath:* the House of Lords *is*.

Instructional.

Art. 52. On each occasion, whether an inquiry of the sort in question shall be entered upon by the body so highly superior in the scale of factitious dignity, it belongs to *accident* to determine: and this accident consists sometimes of an expectation of amusement in the breast of the Member by whom the motion is made; sometimes in the recurrence of the notion, that, lest the inutility of such a body to every interest but its own and that of the Monarch should become too manifest, a show of activity should from time to time be kept up.

Instructional.

Art. 53. Lastly, as to the *Monarch*. When, by his authority, an *Evidence-elicitation Judicatory* is instituted, *Commission* not *Committee* is the word.

I. As to the *object* in view. Instituted by the House of Commons, seldom can the *Committee* have had any other than the *promotion*, —seldom the *Commission* any other than the *exclusion*,—of reform or improvement.

Instructional. Ratiocinative.

Art. 54. II. As to *appropriate powers*. By the instruments of the Monarch, neither could comprehensiveness nor impartiality be secured to the body of evidence elicited by them, if such were really their desire. By law, neither for *responsion*, for *veracity*, nor so much as for *attendance*, do they possess any such power as that possessed by the Judges, or even as that possessed, as above, by the House of Commons. *Consequence*,—the only persons at whose hands, for any one of these purposes, compliance is at their command, are their own dislocable subordinates, together with any such other person to whom it happens to stand subjected to their will by corruptive influence:—*Quality of the information*, such as may be expected from packed witnesses speaking to packed Judges.

Instructional.

Art. 55. As to *composition*. According to circumstances, the Commission is given to number *one*, or to a greater: number *one* is, by reason of the comparative secrecy of the measure, and the unostentatiousness of the expense, best suited to the purposes of *inspection visits* to *distant* dependencies. A *many-seated* sham Judicatory of this kind is the resource, when,—on complaint made of some more than ordinarily scandalous system of abuse,—Ministers are prevented by shame from refusing inquiry, and by fear from trusting to the House of Commons. By fear:—for, the corruption which would with certainty, suffice to engage the *House* in a *body*, to acquiesce in this or any other desired imposture,—would not suffice to secure the excluding from a *Committee* every Member who would not concur in such suppression of evidence as the purpose might require. In the case of a *distant inspection visit*, forecast is exemplified: and the object is —to forestall and avert all such sincere inquiries, as are yet in no other than a future-contingent state: in the case of the *many-seated* Elicitation Judicatory, acting at the *seat of Government*,—the object is—to make a pretence for refusing some inquiry actually called for in the House of Commons. When, for example, under the eye of King, Lords, and Commons,—Judges, and other judicial functionaries of all classes, have been in the notorious habit of practising extortion on false pretences,—thereupon, on pretence of paving the way for reform, comes a *Commission*, under which the population of the judgment-seat, as well as that of the witness's-box, is composed of accomplices; with the *principal* for *Locator*. From a Commission of this sort, a collateral benefit is naturally and commonly, if not constantly, derived: what is called a *job* is effected: and, in place of punishment, criminals receive remuneration for their crimes.

Instructional.

Art. 56. One feature familiar to, if not constant in, English practice, requires here to be laid open to view. It belongs to the *form* of the *Reports:* it consists in the suppression of the interrogatories, by which the responses have been elicited; and, still more frequently of the names of the several Interrogators. Of this suppression, so far as regards the *interrogatories*, a natural and not unfrequent consequence is—obscurity or misconceivedness; so far as regards the power-clad Interrogator,—consequence and final cause, subtraction of his conduct from that scrutiny of the Public-Opinion Tribunal to which he has been subjecting the Interrogatee. The practice may be set down among the natural fruits of aristocratical oppression: presumptive evidence of intentional abuse of power on the part of as many as give into it.

Section XXVIII.

Legislation Penal Judicatory.

Enactive. Instructional.

Art. 1. To any of the following chief functionaries should misconduct be imputed, for the punishment of which, dislocation, with extra publicity, shall not be deemed sufficient,—it rests with the Legislature to form an occasional Special Judicatory for the trial of them.

Functionaries thus triable are—

I. Any Member of the then present Legislature.

II. Any Member of any anterior Legislature.

III. The Prime Minister of the then present, or any preceding time.

IV. The Justice Minister of the then present, or any preceding time.

Enactive.

ART. 2. Number of Members of this Judicatory, three or five.

Enactive.

ART. 3. Judges, either all of them Members of the then present Legislature, or persons who,—at the time when the decree for the prosecution is pronounced,—are not, any of them, Members—either of the Legislature, or of any part of the Official Establishment.

Enactive.

ART. 4. Mode of location, secret suffrage.

Enactive.

ART. 5. The Legislature will at the same time appoint persons, one or more, to officiate as Pursuers.

Instructional.

ART. 6. I. In relation to this extraordinary judicial function, the legislature will, on each occasion, judge whether its time will admit of its taking upon itself this extra charge.

Enactive. Instructional. Ratiocinative.

ART. 7. II. If *all* the members do not, neither should *any*: for, it should not be in the power, either of an individual or of the whole body, in this or any other way, to produce, during the whole or any part of the time occupied in the Inquiry, a virtual vacancy in the particular seats in question, as to the exercise of the legislational function; thus depriving constituents of the service of their agents, as to the principal and peculiar part of their duty.

Ratiocinative.

ART. 8. III. Though,—more especially in the case of a Member,—nothing that can be done, can exclude altogether so inevitable an imputation as that of partiality—still the transference of this temporary function to other hands, will, in no small degree, lessen the ground of the imputation, if men of generally acknowledged aptitude, moral as well as intellectual, are the persons located. In the case where the Prime Minister, or the Minister of Justice—located, both of them, by the Legislature—being parties accused, are guilty—much less difficulty will a man who has not, than a man who has, contributed to their location, find, in contributing to their punishment.

Enactive.

ART. 9. Neither in non-penal nor in penal cases, does the Legislature act, on any occasion, as an Appellate Judicatory: in that field of service, it trusts altogether to the appropriate subordinate authorities. Only in case of punishable criminality, as practised by them in the exercise of their functions, does it take cognizance of the course taken in and by that exercise.

Enactive. Ratiocinative.

ART. 10. But, for as much as of necessity,—in so far as the propriety of the conduct of any such judicial functionary, on the occasion of a non-penal suit comes in question,—that which should, on that occasion, have been done, cannot but come, though, as it were, in a preliminary or collateral way, under the cognizance of the Legislature,—any error which, on that same occasion, shall, in the eyes of the Legislature, have manifested itself, will not be left unredressed.

Ratiocinative.

ART. 11. For knowingly and wilfully to leave a wrong in any shape unredressed, would,—on the part of those who, without preponderant evil, have full power to redress it, be an open profession of injustice, tending to the destruction of public confidence.

Enactive. Instructional. Ratiocinative.

ART. 12. On every such occasion, the Legislature will, at the same time, be upon its guard, lest, by this means, it should insensibly be led to constitute itself into an ordinarily officiating Appellate Judicatory: an office, as to the functions of which it is essentially incompetent; to wit, as well in respect of the multitude of the Members of which it is composed, as in respect of the vacancy which would thereby be created in the exercise of its appropriate and peculiar functions.

Enactive. Instructional.

ART. 13. Accordingly, if, on the face of the application, no criminality in any shape be imputed to the functionary whose conduct is the subject of complaint,—the Legislature will uniformly refuse to take cognizance of it. In a case in which such imputation is made,—if no sufficient reason for imputing criminality is found, the Legislature may accordingly make declaration to that effect, forbearing to accompany such declaration of acquittal with any decree, imperative or opinative, in relation to any such alleged wrong, as above.

Enactive. Instructional.

ART. 14. On every such occasion, if, in the eyes of the Legislature, the accusation has been not only insufficiently grounded, or altogether ungrounded, but accompanied with evil consciousness or temerity,—it will, if it see sufficient reason,—on the same evidence, and without the formality of a separate suit, proceed,—as in the case where compensation is given in the name of *costs*,—to punish the wrongful accuser with such punishment as the case shall appear to demand.

Instructional.

ART. 15. Note, that, only in case of a *decision*,—or, where *decision* is due, *non-decision* by an *Appellate Judicatory*,—or by the *Jus-*

tice Minister, in the extraordinary and narrow field of the judicial service allotted to him, as per Ch. xxiv. section 4, *Judicative function*,—can any such *non-penal*, under the guise of a *penal* suit, as above, be apprehended: for as much as, for redress of wrong done by an Immediate Judicatory, the correspondent Appellate Judicatory is constituted, and its doors kept wide open,—while, as above, those of the Legislature are against all such applications, shut.

Instructional.

Art. 16. Note also that, for prevention of wrong otherwise about to be done, or redress of wrong done, by a Judge, without deficiency on his part in respect of appropriate *moral* aptitude,—facilities may be seen afforded, in and by Ch. xii. Judiciary collectively: Section 19, *Judges' contested interpretation reporting function*—Section 20, *Judges' eventually emendative function*, and Section 21, *Judges' sistitive*, or say, *execution-staying function:* and moreover, by the general facility for amendment, afforded by the *melioration-suggestive function* allotted by this Code throughout, to individuals as well as to judiciary and other functionaries.

Section XXIX.

*Members' Motions.**

Instructional. Expositive.

Art. 1. In proposing an ordinance, a member will do well to consider, whether in the law as it then stands, there be any Article, to the matter of which, such his ordinance would, if adopted, be repugnant, in such sort, that if that Article were thereafter to receive its execution, the so proposed ordinance would thereby, in some way or other, be contravened. In case of non-repugnancy, his new proposed ordinance is independent and *non-emendative:* in the case of repugnancy, it is, to the extent of the repugnance, *emendative*.

Instructional. Ratiocinative.

Art. 2. If thus it be *emendative* in effect, he will do well to render it declaredly so: for thus only can the *Pannomion*† be kept clear of that needless and useless voluminousness, with obscurity, confusedness, and incomprehensibility for its effects, by which, in the nature of the case, it cannot otherwise escape being more or less vitiated.

Instructional. Expositive.

Art. 3. *Declaredly emendative*, an ordinance may be, in either of two modes—the *directive* or the *reeditive*. In the *directive* mode, the Draughtsman will proceed in the manner of an author, in directing corrections to be made, in and by a list of *Emendanda* or *Corrigenda*. Taking for the subject of his reference the *Pannomion* as it stands—"In such an Article," (he will say) referring to Code, Chapter, Section, and Article, "omit so and so;" or, "between such and such words, insert so and so;" or, "to such and such, substitute such or such words;" or, taking the Article entire, "omit such or such an Article;" or, "between such and such an Article, insert such or such an Article or Articles;" or, "to such or such an Article or Articles, substitute the following."

Instructional. Enactive.

Art. 4. Follows a formulary for the introduction of an amendment. "By the Legislature," [Year, Month, and Day.] "In" [referring, as above, Art. 3, to the portion of the *Pannomion*] "the following amendments are this day made." [Hereupon follows the direction as above.] Attestator, the *Legislation Minister*. Each amendment, if adopted, being the work of the Legislature,—the proposer will not, in penning his proposal, scruple thus to speak in the name of the Legislature.

Instructional. Enactive.

Art. 5. In the *reeditive* mode, the proposer proceeds, in the manner of an author, who is publishing a new edition of his work. Introductive formulary as follows:—"By the Legislature"—[Year, Month, and Day, and place in the *Pannomion*, as above.] "It is ordained as follows." Thereupon comes the new matter. If, in this ordinance, there be anything which is in repugnance to any part of the *Pannomion*, as above,—to minimize doubt and needless quantity of matter, he will proceed in manner following. "*Repealed* on this occasion are"—then will follow the indication of the several Articles. On this occasion, no alteration will he direct to be made in any Article. Instead of giving any such direction, he will repeal the entire Article, and substitute a new one.

Instructional. Enactive.

Art. 6. In an *emendative* ordinance expressed in the *reeditive* mode, indications will be given as follows:—

I. Indication made,—by appropriate types and other means,—of words, omitted, added, or substituted, as above: in such sort that, in the new edition, if possible, by a single glance, the eye may be able to distinguish the new matter from the old.

II. Indication made,—of the proposer, his seconder, his other supporters, and his opposers. Thus, to all persons concerned will it, in all times, be made known,—in what particulars, at what times, by what ordinances, at whose instance, and under whose opposition,—effect,

* On the subject of this section see farther Essay on Political Tactics, vol. ii. p. 301, *et seq.*—*Ed.*

† [*Pannomion.*] From the Greek:—the whole body of the laws.

good or bad, on the interest of the community, has been produced.

Enactive.

ART. 7. To every Member, it belongs, of right, to make whatsoever motion he thinks fit, in whatsoever terms he thinks fit, in relation to any matter he thinks fit: on its being seconded by any other Member,—any such motion becomes a subject of discussion, and is eventually capable of being converted into an ordinance of the Legislature.

Instructional.

ART. 8. In case of need, should it happen to the Legislature to find its time wasted by ill-considered motions, it will, for remedy, instead of one such preliminary adopter, require two or more.

Instructional. Ratiocinative.

ART. 9. To obviate, however, the voluminousness and confusion, liable to ensue, from laws made, at different times, on the motion of different persons,—on principles in respect of *form* as well as *matter*, disparate or adverse, —a Member, antecedently to any motion tending to the enactment of a new ordinance, will do well to consider, to the province of which of the several *Ministers*, if any, the matter belongs: thereupon, to communicate on the subject with such Minister or Ministers,—and, in so far as they and he agree, to consult with the *Legislation Minister* as to the bearings of the proposed ordinance on those already in existence, and thence, as to the *form* in which, on its introduction, the proposed ordinance may most conveniently stand expressed: and, in particular, whether in the *independent* and *non-emendative* form, as per Art. 1, or in the *emendative:* and, if in the *emendative*, whether in the *directive*, or in the *reeditive*, as per Art. 3, 4, 5, 6.

Instructional.

ART. 10. If, to any such Minister, such communication shall have been omitted to be made,—*reasons* for the omission will be expected to be given: so, in case of non-concurrence on the Minister's part, reasons for and against such non-concurrence. No such Minister is bound to concur in any such motion: but to him the mover is expected to communicate it; he, to receive it and to attend to it: and so throughout its progress, until it is either adopted or rejected.

SECTION XXX.

Dislocable how.

Enactive.

From the situation of Member of the Legislative Assembly, causes of dislocatedness are these—

1. Resignation.
2. Acceptance, of any other office belonging to the Official Establishment of this State.
3. Acceptance, of any office belonging to the Official Establishment of any Foreign State.
4. Acceptance, of factitious honour or dignity, in any shape, at the hands of any Foreign Government.
5. Mental derangement.
6. Disturbance, of Legislative proceedings, as per section 16, *Security for the Assembly against disturbance, &c.*
7. Criminal delinquency, pronounced by the sentence of a Judiciary, located for this purpose by the Legislature, as per section 28, *Legislation Penal Judicatory.*
8. Dislocation, by his constituents, in virtue of their *incidental dislocative*, as per Ch. v. CONSTITUTIVE. Section 2, *Powers.*

SECTION XXXI.

Securities for appropriate aptitude.

Instructional.

ART. 1. The assemblage of securities, here proposed with reference to the highest department, the Legislature, forms the commencement of an all-pervading system of the like securities, covering the whole field of the Official establishment, and applying to all public functionaries in every department and subdepartment. The same endeavour will accordingly be seen successively applying itself to the situation of Prime Minister,—to the situations of the several Ministers,—to the several Sub-legislatures, their Members, and Subordinates,—and with more especial solicitude to that of the several Members of the Judiciary establishment; and lastly to the bis-subdepartment occupied by the Local Headmen and Local Registrars, whose logical fields of service, in their respective smallest local fields of action, lie in subordination to the directing functionaries of the Administrative and Judiciary departments; and are composed accordingly of portions of the logical fields of service of both.

Security against abuse of power composes one branch of the system of securities here provided: one branch, but not the only one: for, security against abuse of power is but one branch, though the principal one, of security for appropriate *moral* aptitude: and to this are added security for appropriate *intellectual* and security for appropriate *active* aptitude.

Instructional.

ART. 2. For this purpose, and on these several occasions, confidence (it cannot be denied) may with truth be said to be minimized: *distrust* and *suspicion* maximized. Principle acted upon, say for shortness, the *confidence-minimization principle:* whence, as to practical deductions, the *control-maximization principle.*

Instructional.

Art. 3. Corresponding *rules* are the following:—I. To no official situation, attach any more power than is necessary to enable the functionaries to exercise the functions of it with the most effectual subserviency to the dictates of the *greatest-happiness principle.*

Instructional.

Art. 4. II. To every such situation, apply such instrumentary arrangements as, by means of appropriate *selection*, *restraint* and *constraint* shall afford the efficient security for appropriate aptitude in all its branches.

Instructional.

Art. 5. III. The arrangements for *restraint* are those which promise to afford the most effectual security against abuse of power: to wit, of the several powers respectively instituted and conferred.

Instructional.

Art. 6. These principles and rules have for their bases certain *axioms*, or say *assumptions*. These are expressive of certain supposed matters of fact: the existence of certain propensities in all human minds.

Instructional.

Art. 7. I. In all human minds, in howsoever widely different proportions,—*self-regard*, and *sympathy* for others, or say, *extra-regard*, have place.

Instructional.

Art. 8. II. But, in self-regard even sympathy has its root: and if, in the general tenor of human conduct, self-regard were not prevalent over sympathy,—even over sympathy for all others put together,—no such species as the human could have existence.

Instructional. Expositive.

Art 9. Take any two persons, A and B, and suppose them the only persons in existence:—call them, for example, *Adam* and *Eve*. *Adam* has no regard for himself: the whole of his regard has for its object *Eve*. *Eve* in like manner has no regard for herself: the whole of her regard has for its object *Adam*. Follow this supposition up: introduce the occurrences, which, sooner or later, are sure to happen, and you will see that, at the end of an assignable length of time, greater or less according to accident, but in no case so much as a twelvemonth, both will unavoidably have perished.

Instructional.

Art. 10. To give increase to the influence of sympathy at the expense of that of self-regard, and of sympathy for the greater number at the expense of sympathy for the lesser number,—is the constant and arduous task, as of every moralist, so of every legislator who deserves to be so. But, in regard to sympathy, the less the proportion of it is, the natural and actual existence of which he assumes as and for the basis of his arrangements, the greater will be the success of whatever endeavours he uses to give increase to it.

Instructional.

Art. 11. A consequence is—that whatsoever evil it is possible for man to do for the advancement of his own private and personal interest, (or what comes to the same thing, what to him appears such,) at the expense of the public interest,—that evil, sooner or later, he will do, unless by some means or other, intentional or otherwise, he be prevented from doing it.

Instructional.

Art. 12. To the above rule suppose there is this or that exception: still, with a view to practice, there might as well be none: forasmuch as by no criterion will it be possible, to distinguish the individuals in whose instance the exception has place, from those in whose instance the general rule has place: more especially when, as in the case of all Legislative arrangements of a general nature, the individuals in question are unassigned and unassignable.

Instructional.

Art. 13. Neither to the public service is it in the nature of the precautions in question to be hurtful; nor yet so much as to the reputation or the feelings of the individuals to whom they apply.

Not to the public service? Yes, indeed, if of the care thus taken to avoid giving to functionaries *more* power than, as above, is needful, the effect were—to withhold from them any part of that which is needful. But, in proportion to the attention with which the arrangements in question are looked into by him, and compared with others, will be every man's assurance,—that in no existing Code is the scope given to the power of ruling functionaries so ample as in the present proposed Code.

Instructional.

Art. 14. Not even to the reputation or the feelings of any individual functionary or non-functionary are these precautions hurtful. Yes, if they applied to him to the exclusion of others, or in a more particular manner than to others. But, no: for, without any exception, they apply to all persons alike.

Instructional.

Art. 15. To say—they ought not to apply to me, is as much as to say—*I am not of the human species:* or at the least with the Pharisee, "*I am not as other men are.*"

Instructional.

Art. 16. As little can these precautions be said to be needless: for, wheresoever no obstacle—no bar to evil doing is opposed, and

motives inciting to evil doing are at work, evil doing will, by the prevalence of self-regard over sympathy, be sure to be let in. Suppose the probability of evil doing ever so faint, still ought the obstacles in question to be opposed to it, considering that by their being opposed to it, evil may be excluded, while, as above shown, from their being so opposed, in no shape can evil, public or private, be introduced.

Instructional.

ART. 17. Accordingly, on this supposition, in respect of the treatment given by them to the *subject many*, proceed, on every occasion, the ruling *one* and the ruling or sub-ruling *few*. No evil, how atrociously and extensively mischievous soever, do they speak of or deal by as too mischievous to be likely to be exercised: no mischievous act, in so far as the subject many are regarded as capable of being the actors, and these rulers themselves as liable to be sufferers by it, do they leave unnoticed, or by force of restraint and punishment, omit to use their endeavours for the prevention of it.

Instructional.

ART. 18. In the estimates acted on by rulers, the degree of propensity to evil in the minds of the subject many is commonly carried rather beyond than short of the truth. In particular, such is the estimate acted upon by all Legislators: such is the estimate acted upon by all Judges, especially by all Judges, who, as in England, are suffered to act, and act accordingly, as Legislators: except always in so far as the persons acted upon belong to those classes which are linked with theirs by a community of particular and sinister interest.

Instructional.

ART. 19. Widely different, not to say opposite, in relation to propensity to evil on their part, is the estimate by these confederates acted upon. Is it the *ruling one* that is in question? His estimate of himself, as expressed in his own language, is—*I am not as other men are: they are of the species composed of miserable sinners. I am of the species between God and man.* Thereupon, from the lips and pens of those to whom he is an object of hope or fear, comes the response in chorus—*O yes, sir, so you are!* Are they the *ruling few?* Of the like complexion here too, is the estimate acted upon,—and a certain theory, on which it is grounded. *Motives* (says this theory) *are of two sorts, impure* and *pure*. With few or no exceptions, the motives which give determination to the conduct of all, whose situation in the conjunct scales of power and opulence is beneath a certain level, are *impure* or *pure*, as it may happen: in all situations *above* that same level, at all times supremely and invariably pure:* to suppose that, on any occasion, they do or can fail of being so, is an affront, and a gross injury: an injury to which, either at the hands of justice, or at those of the party injured, condign punishment is due.

Instructional.

ART. 20. Not that in this theory about *purity* and *impurity*, there is anything better than stark nonsense: not that any one who utters it, knows what it is he means by it. But, if the theory wants so much, the practical conclusions from it want not anything of being sufficiently intelligible:—*Reserve all restraints for those others: none are needful, all are injurious, if applied to ourselves.*

Instructional. Exemplificational.

ART. 21. In point of fact—unquestionable fact—how stands relative behaviour in correspondence with the condition of the two situations? In the position supposed as above? No: but exactly the reverse. The more dependent a man is for the comforts of life on his good behaviour to others, the better is his behaviour to them: the less dependent, the worse. The greater a man's power, the stronger his propensity in all possible ways to abuse it. Of this fact, all history is one continued proof. Ye who, for examples, fear to look near home, —send your regards to a safe distance. Look to the twelve Cæsars: there you have distance in time: look to all oriental despots: there you may have distance in time and space.

Instructional. Ratiocinative.

ART. 22. But, if such were not the effect of power in all lesser masses, neither could it have been so in those greatest possible masses. Not in the inverse, but in the direct ratio of the quantity of power possessed, is the degree of propensity to do evil in every shape: the degree of the propensity, and therefore the quantum of the demand for securities against the existence and the effects of it. If to any one it appears, that in any part of the scale, this proportion fails to hold good, let him say in what, and wherefore.

But, in this respect, suppose high and low upon a par;—suppose even, that, in the high situations, the evil propensity is less strong than in the low ones;—still, so long as, in the case of the mind in question, the existence of it is in any degree admitted,—the demand for the securities in question must be allowed to be indispensable.

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* Prototype and model of this theory, that of the origin of *metals*, as delivered in the old English Law Book, Plowden's Commentaries,—case, styled *Fogassa's Case*:—father and mother of all metals, mercury and sulphur: in a pure state, they beget the precious, in an impure, the base metals.

For a supposed all-comprehensive and unsophisticated, if preferred to a sophisticated account of motives, see *Springs of Action Table*, by the Author of this Code; and for elucidation of it, *Introduction to the Principles of Morals and Legislation*, (in vol. i. of this collection.)

Instructional.

Art. 23. If so it be, that these securities for appropriate aptitude are thus incontestably beneficial and needful,—the sort of reception a man gives to them when proposed, may serve as a test of his own appropriate aptitude, moral and intellectual. Regarding them as beneficial and needful, does he contest their being so? judge thence of his sincerity and probity: regards he them as not beneficial, or as not useful? judge thence of his understanding.

Instructional.

Art. 24. Different will naturally be the reception experienced by these securities, at the hands of rulers, in different governments: most favourable, in a pure representative democracy: less favourable, in a pure and absolute monarchy: most completely unfavourable in a mixed monarchy, composed of a mixture of monarchy and aristocracy, with or without a tinge of representative democracy.

Instructional.

Art. 25. I. Look first to a pure representative democracy. Why in this case most favourable? *Answer.* The reason is almost too obvious to bear mentioning. Every man is a gainer by the efficiency of these securities: no man can entertain a hope of being a gainer from their absence, or their inefficiency.

Instructional.

Art. 26. One class, and that the only one, by which an unfavourable reception will naturally be given to it, is the *Lawyer* class: and, even in their case, not to the whole system,—but only to that part of it which applies to the Judicial Department.

Instructional. Exemplificational.

Art. 27. For exemplification and instruction, look to the Anglo-American United States. In that seat of good government,—by that class, and by that alone, is a system of authorized depredation kept in exercise at the expense of all the other classes: accordingly, for no system of securities, the tendency of which is to lessen the amount of evil from *that* source, can any favourable reception be reasonably expected at such hands.

Instructional. Exemplificational.

Art. 28. Of the ascendancy of this class the cause is—that when the people cast off the other parts of the English yoke,—neither time, nor the state of appropriate intellectual aptitude on the part of leading men, admitted of their casting off, except in here and there an easily detached fragment, that part, which, under the name of *Common Law*, had, by those of the King's creatures and instruments, by whom were occupied the chief judicial situations, been gradually imposed upon the rest of the community,—for their own benefit, in subserviency to and in conjunction with that of the Monarch, by whom they had been located, and were at every moment dislocable. In this same *Common Law*, with its essential and most elaborately organized uncertainty, its factitious delay, vexation, and expense, did they behold an instrument which, with more or less effect, would, in all such hands as could obtain a share in the use of it, be applicable to the purposes, for which, as above, it had been originally framed.

Instructional.

Art. 29. True it is—that, in that same fortunate region, by the *official* class of lawyers, no such share is reaped in the plunderage as by the professional class: nor, in the professional class, are the largest lots nearly equal to those which are reaped by the same class in the mother country: the magnitude being kept comparatively small by the multiplicity of the competitors: but by this very multiplicity will their appetite for the golden fruit, and their fear of losing any part of it, be sharpened, and their horror of everything that threatens to lessen it, augmented: and, misrepresentation being the grand instrument of their trade,—the use of it, in a case of such vital importance cannot reasonably be expected to be spared.

Instructional.

Art. 30. II. Look next to a pure and absolute Monarchy. So as the power of depredation and oppression, to the use of himself and such instruments and favourites as, from time to time, it may please him to let in for a participation in the benefit of that same power, remains unchanged,—security against abuse of power by all other functionaries, so far from being to the Monarch a sure object of displeasure, will naturally enough be an object and source of satisfaction in his eyes. Depredation committed by them to their own profit, will be to him so much loss: for, the greater the spoil taken by them, the less remains for him: and, as to oppression as well as depredation,—by whatsoever is committed by them in gratification of their own appetites, discontent is produced and secret enmity, from which he has never anything to hope, and always more or less to apprehend: considering, as he cannot but now and then consider, that his life is at the mercy of every man who will risk his own life for the hope of destroying that of the supposed author of his sufferings.

Instructional.

Art. 31. In this case, the misfortune is—that, of the aggregate mass of securities against abuse of power in functionaries, the greatest part, as has been, and will be further seen, unavoidably depends upon the power of the Public-Opinion Tribunal: and a Monarch will always be fully sensible, to the difficulty which there cannot but be, in allowing that authori-

ty to oppose its force to abuse of power, in the shapes in which it appears to him that he would be a sufferer by it,—without seeing and feeling that same force acting against that same abuse, in the shapes in which the whole or the greatest part of the profit from it is reaped by himself.

Instructional.

ART. 32. To come to particulars: Security against abuse of power on the part of the Legislative authority,—no such Monarch can, of course, be naturally expected to endure: for his is the Legislative authority. Not so as to his subordinates, all or any, in the Administration Department: not so, as to his subordinates even in the Judiciary Department: for, of appropriate aptitude in both those departments, his absolute power enables him to reap for himself the full benefit: while, on every occasion on which, in his view of the matter, it threatens to oppose obstacles to his will,—he can extinguish it, or completely guard himself against the effects of it. Not altogether without reason, therefore, may he be expected to give acceptance—if not to all securities against abuse of power in those departments,—at least, to all such securities as can be employed, without giving, to the Public-Opinion Tribunal, an influence, capable, in his eyes, of opposing obstacles to any such depredation and oppression as it may happen to him to feel disposed to see committed.

Instructional.

ART. 33. III. Look now to pure aristocracy. Look, in a word, to British India: for, though a controlling power is in the hands of the mixed monarchy to which the members of that same aristocracy are subject,—yet it is by themselves that all the details of Government in the way of legislation are carried on. Securities against abuse of power on the part of the Legislative authority, they cannot reasonably be expected to endure; for they themselves are Legislators. So neither against abuse of power on the part of occupants of situations in the Administrative department: for, by themselves, or by those in providing for whom they provide for themselves, are those same situations occupied: accordingly, ruin is the universally expected and most effectually denounced lot, of all who should presume to bring to light, or hold up to view, within the field of their power, any instance of such abuse: all this under the eye and to the perfect satisfaction of the superior authority—the King's Board of Control—whose care it is, to whatsoever else they apply this same control, not to apply it to depredation, to oppression, or to that power by which complaint is stifled, and misery thus maximized.

Instructional.

ART. 34. Thus irremediably adverse are they naturally rendered, to the application of all such securities to the legislative and administrative departments. Not altogether so in regard to the judicial department. For, to such a degree, on the part of their subjects, for want of appropriate civil law judicature and procedure, does security for property remain deficient,—that by the deficiency the quantity of the matter of wealth capable of being extracted from them, is manifestly diminished. The consequence is—that, supposing appropriate legislation and judicature capable of being established, with such effect as to give increase to the quantity of wealth so extractible, and at the same time without giving to the Public-Opinion Tribunal any such power as would oppose a sensible check to the profitable and indispensable abuse of power in the other departments,—a system, of good judicature and correspondent legislation, might, not altogether without reason, be expected to find, at least among the most enlightened of that same body, its advocates.

A circumstance that contributes to render such a result the less improbable is—that, as to those situations, in which, in cases regarded as the most important, judicial power is exercised,—the power of location is in the hands—not of these same aristocrats, but of the Monarch; and, by the depredation exercised to so vast an amount by those creatures of their superior, the sub-aristocratical creatures of the aristocratical rulers are sufferers without being gainers.

Instructional.

ART. 35. IV. Look lastly to mixed Monarchy: composed, as above, of a mixture of Monarchy and Aristocracy: the one and the few sharing between them the absolute power: but, in proportions at all times variable; because, at all times, depending upon and varying with the degree of vigour in the Monarch's mind, and the direction taken by it. In this case, the horror of all such securities is naturally, not to say necessarily, universal on the part of both: into no one department of Government will the idea of any application made of them be endurable. The Monarch cannot abuse his power to his own benefit without their concurrence; nor therefore without suffering, and even, upon occasion, helping, them to make abuse of power to their benefit: they cannot abuse their power to their own benefit without his concurrence, as above. The ruling *one* cannot keep his subjects under a system of regulated plunderage, without letting in the sub-ruling or co-ruling *few* for a proportion of the plunder: they cannot get in that same share, but either through his hands or with his concurrence. He cannot extort a million a-year for the gratification of his own appetites without keeping the official establishment filled with overpaid offices, needless offices, and sinecures, to the amount of ulterior millions shared by them among themselves. He cannot keep up a vast and need-

less permanent military force on both elements without sharing among them the offices, military and civil, belonging to it.

Instructional.

Art. 36. On the other hand, legislative assemblies, the proceedings of which cannot be carried on without a certain degree of publicity, being of the essence of this form of Government, it cannot, easily, if at all, be carried on without suffering the Public-Opinion Tribunal to be in existence, and to exercise, with more or less effect, and with much more than under a pure Monarchy, its abuse-restraining and tutelary power. For, in every such assembly, there will of course be at all times two parties, contending against one another for such parts of the plunderage as are at the disposal of the Monarch, and for all such other power as is open to competition: and their sole means of contending with one another is, on all occasions, a virtual appeal, more or less explicit, to the will and undefinable power of the people, say, to the Public-Opinion Tribunal, by which that same saving power is exercised.

Instructional.

Art. 37. Think now—whether, under any such form of government, for any efficient system of Securities for appropriate aptitude on the part of the Members of the Official Establishment in the several departments, Legislative, Administrative, and Judicial; and, in particular, for that moral aptitude by which, in proportion as it has place, needless expense is excluded,—anything like a favourable reception can on any reasonable grounds be expected. Can it in the Legislative Department? No: for, between the Monarch and the Aristocracy all legislative power is shared. Can it in the Administrative Department? No: for there likewise, through the same channels, afforded by overpaid places, needless places, sinecure places, pensions for retreat, and pensions without even that pretence, whatsoever portion of the matter of wealth can be extorted from those by whose labour it is produced, is shared among these same self-styled pure, and too indisputably exalted, hands.

Instructional.

Art. 38. Can it in the Judiciary? No: for without any the least trouble or odium,—by the hands of their necessary and dependent instruments—the higher class of Judges, the three superior classes of functionaries—King, Lords, and Commons—can carry on, and reap the profit of, abuse of power in cases to an indefinite extent, in which, by so operose a machine as that of Parliament, fear of shame, of public discontent, of resistance, of the trouble of getting through the forms,—would concur in preventing their carrying it on with their own hands. In a chamber called a *Court of Justice*—half a minute—in some cases, of four men's, in others of one man's, time,—not only can do, but is habitually employed in doing, that which, in the two chambers called *Houses of Parliament*, if in those places it could be done at all, would cost months, not to say years, to do in those forms, without which validity might be questionable, and disobedience not improbable. So much for *time*: then, as to *words*, issued from a bush of artificial hair, a word or two, such as *conspiracy*, *Christianity*, *blasphemy*, *libel*, *hurt to feelings*, *bonos mores*,—can convert innoxious acts into crimes, punish men at pleasure and without warning, banish security from property, substitute secret judicature to public, stifle all complaint, bar out all redress; take children out of the hands of fathers; engage booksellers to cheat printers,—extinguish literary property in a book without looking at it. Banish security from property? Yes: and not only from all property, but from whatever else possesses value: for wherever by the name of *Common Law*, *Judge-made law* reigns,—security is an empty name.

Instructional.

Art. 39. Add to this the service rendered to Legislators in their individual capacity, by the impunity secured to them in the character of Magistrates:—conferred thereby and established by Common Law, behold accordingly a power of oppression too enormous to be assumed and established by Statute Law.

Instructional.

Art. 40. Under this form of government,—thus conveniently assistant, not to say necessary, to abuse of power in the Legislative and Administrative, is an unrestrained and correspondent abuse of power in the Judiciary department: in this state of things, whether in or for any one of the three departments any efficient securities against such abuse have, under this same form of government, any much better chance of finding acceptance than in or for any other, must be left to experience to declare.*

Instructional.

Art. 41. Securities here provided for ap-

* The course of experience here alluded to, is it not sufficient? Add then one fact more, with the *volumes*, as the phrase is, *spoken* by it. In a work, now for upwards of a twelvemonth past published, and repeatedly advertised,[a] a knot of English Judges, under the immediate authority, and to the vast profit of the heads of the law,—that is to say, of all the Judges,—and in conjunction with a set of professional lawyers, whom, as is shown, they have even forced into the confederacy,—have been proved to be in the constant and long-continued practice of a crime—"obtainment of money by false pretences"—for which, by an Act of the Legis-

[a] *Indications respecting Lord Eldon*, (vol. v. p. 348.)

propriate aptitude in the situation of members of the Legislative Body, are these—

Instructional.

ART. 42. I. For appropriate aptitude in all its branches taken together—

1. *Locators*, those whose interest it is that the happiness of the greatest number be maximized: as per Ch. ii. ENDS and MEANS: Ch. iii. SOVEREIGNTY, IN WHOM: Ch. vi. section 4 to 13 inclusive: condition and number of the locating Electors.

2. General responsibility, as per section 2, *Responsibility*.

3. Shortness of term of service in each Elector: namely, no more than one year, as per section 14, with the accidental addition of the fragment of another, as per section 22, *Term of service, continuance*.

4. Non-relocability, till after the lapse of two or three years, reckoned from the expiration of the last preceding term of service, as per section 25, *Relocable who:* Section 26, *Wrongful exclusion obviated:* that choice of persons who have had experience, and of whom experience has been had, may never be wanting.

5. General responsibility of the whole body, and its several members, as per section 2, *Responsibility*, and section 23, *Self-suppletive function*, and Ch. v. CONSTITUTIVE, section 6, *Securities against Legislative, &c.*

6. Special causes of temporary secrecy excepted,—publicity of legislational sittings, as per section 21, *Sittings, public and secret*.

7. Publicity, permanent as well as immediate, given—to the part taken by the several members, on the occasion of each motion, as per section 29, *Members' Motions*. Art. 6.

8. Securities for appropriate aptitude, on the part of all subordinate functionaries,—in the several other departments, administrational and judiciary,—without whose concurrence scarcely can any considerable evil be produced by the ordaining body. See the sections intituled *Securities, &c.*, in the chapters, headed Ch. vii PRIME MINISTER—Ch. ix. MINISTERS COLLECTIVELY—Ch. xii. JUDICIARY COLLECTIVELY—Ch. xxv. LOCAL HEADMEN—Ch. xxvi. LOCAL REGISTRARS.

Instructional.

ART. 43. II. Securities, applying more particularly to *moral* aptitude.

1. Provision made, against corruption in every shape, as per section 19, *Remuneration;* and, by constancy of appropriate occupation, to the exclusion of time for corruptive intercourse, as per section 18, *Attendance;* section 20, *Attendance and Remuneration*.

2. In case of delinquency, punibility at the hands of succeeding Legislatures, as per section 28, *Legislation Penal Judicatory*.

3. Special security provided against mutual disturbance to members, during Legislational Sittings; as per section 16.

4. All-comprehensive subjection to the tutelary power of the *Public-Opinion Tribunal*, through the instrumentality of the LEGISLATOR'S INAUGURAL DECLARATION, as per Ch. vii.

Instructional.

ART. 44. III. Securities, applying more particularly to *intellectual* aptitude.

1. Exceptions excepted, original locability of all persons without distinction by the respective Electoral Bodies.

2. After the expiration of the preparation period, as in the case of Ministers and other functionaries belonging to the Administrative Department, as per Ch. ix. MINISTERS COLLECTIVELY, section 16, *Locable who*,—sole persons locable, those by whom proof of appropriate aptitude has been given; namely, by means of the *Examination Judicatory* thereby organized.

3. Provision made, for all comprehensiveness of appropriate information, as per Ch. viii.

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lature,[a] expressed in these very words, men at large have, for near a century past, been consigned to imprisonment, transportation, or the pillory, at the option of another set of Judges belonging to the same Judicatory. Of the establishment of this demonstration, what has been the consequence? Prosecution of the accused? No. Prosecution of the accuser? No: for by such prosecution the accused, with their guilt upon their heads, would be dragged into the broadest daylight: and though there is but one accuser, yet it is from published works of other persons in considerable number, that the facts constitutive of the matter of accusation are derived: what was done by the accusation being an indication given of the bearing of the law upon those same facts. Meantime, by all Parliament men, by all Judges, by all professional lawyers of all classes,—it is either read or heard of: it is known to be true, and, as if by universal consent,—regarded, or turned aside from, in the most perfectly uninterrupted silence.

All this while, the more deeply and more manifestly the members of this section of the *ruling few*, are plunged in the habit of those transgressions, a single act of which suffices to consign any one of the *subject many* to punishment and infamy,—the louder are they in that chorus of protestations, and self-eulogies, and mutual certificates of impeccability, in which, if there were any approach to the truth, all security against deficiency in appropriate *moral* aptitude, not to speak of *intellectual* and *active*, would be needlessly and uselessly vexatious.

Never, till the people have opened their eyes wide, never till they have lifted up *their* voices likewise in full chorus—giving at once support, confidence, and ulterior impulse to whatsoever men in power their good fortune may have listed in their service,—no, never will the plague of lawyers be stayed. Pruning? Yes, that they will peradventure consent to; but, by appropriate pruning, this poison tree, like any other tree, is not destroyed, but fructified and preserved.

Folly alone can expect criminality in high places to take flight, so long as it continues not only unpunished but respected: respected, and even, in forms prescribed by itself, worshipped.

[a] 30 G. II. Ch. 24, sect. 1.

Prime Minister, section 10, *Registration System*, and section 11, *Publication System;* Ch. ix. Ministers collectively, section 7, *Statistic function;* Ch. xii. Judiciary collectively, section 14, *Publicity-recordation publication;* Ch. xxi. Immediate and Appellate Judiciary Registrars; Ch. xxvi. Local Registrars; Ch. vi. Legislature, section 27, *Legislation Inquiry Judicatory.*

4. Provision made, for giving to fresh enactments, on their introduction, the most apt form, in respect of the conjunct qualities of correctness, comprehensiveness, clearness, conciseness, or say succinctness, and methodicalness,—and without diminution of appropriate power,—as per section 29, *Members' Motions:* and on the responsibility of a subordinate Minister, located for this purpose; as per Ch. xi. Ministers separately, section 2, *Legislation Minister.*

5. Provision made, in respect of those same qualities, by needful legislative interpretation and special amendment, according as the need is brought to view in the course of *Judicature:* as per Ch. xii. Judiciary collectively. Section 19, *Judges' contested-interpretation function.* Section 20, *Judges' eventually-emendative function.* Section 22, *Judges' preinterpretive function.*

Instructional.

Art. 45. IV. Securities, applying more particularly to appropriate active aptitude.

1. Provision made, for the uninterrupted sittings of the Legislative body: as per section 1, *Powers and duties;* and section 18, *Attendance.*

2. Provision made, for the uninterrupted attendance of each Member, as per section 18, *Attendance*, and section 20, *Attendance and Remuneration;* or, in case of accident, by a Deputy of his choice, and for whom he is responsible: as per section 23, *Self-suppletive function.*

CHAPTER VII.

LEGISLATOR'S INAUGURAL DECLARATION.*

Section I.

Authentication, how.

Enactive.

Art. 1. In the front of the Election District Office, in face of the assembled multitude, immediately after the notification made by the Election Clerk of the person in whose favour a

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* Of a formulary of this sort, the chief use is to keep the Legislative and other constituted authorities in the more effectual subjection to the Constitutive: to wit, by means of the power of the moral sanction, as exercised by the Public-Opinion Tribunal,

The points here enumerated are in general such, that, in relation to them,—more especially in the case of persons in the situation in question,—the force of the legal sanction cannot, in the nature of the case, be brought to bear, in such sort, as to subject men to punishment under the name of *punishment*, for aberration, in any direction, from the assumed line of rectitude. But, in the exercise given to its power, the *Public-Opinion Tribunal* neither is, nor ought to be, nor can be, fettered, by those formalities, by which the exercise of the power of the legal sanction ought everywhere to be, and to a certain degree is everywhere restricted.

Under the sort of law established and enforced by the power of the moral sanction,—the penalty, for transgression in whatsoever shape, is forfeiture of a correspondent degree of popularity: and no formality of trial is necessary to the giving execution and effect to this forfeiture.

Take here an example. For the purpose of an indisputably necessary branch of service,—the Legislature allots (suppose,) a somewhat larger sum than could have been necessary:—for no such impropriety of conduct, without preponderant evil in the shape of dissension and danger of civil war, could those who joined in the allotment be subjected to legal punishment, as per section 28, *Legislation Penal Judicatory*, at the hands of their successors. But, in the case of a general habit of profuseness, an excess of this sort would, by the public mind, be carried to account, and contribute to the formation of a body of displeasure, by the aggregate weight of which, the popularity and influence, of the persons in question, might at length be sunk.

So, in the case of unfriendly deportment, in this or that particular instance, towards this or that foreign power. Of misconduct in this shape, the natural tendency would be—to produce, in the first instance, an interruption of intercourse in the commercial and other mutually useful shapes, and ultimately perhaps of war. Other examples more impressive might not improbably be found; but, for the explanation of the general design, these (it is believed) will be found sufficient.

Upon the whole, the instrument may be considered as a sort of *Moral Code*, adapted to the situation of Legislators; and as containing a sort of map of the field of legislation.

A moral disease, with the seeds of which, most if not all opinion-professing instruments in use have hitherto been tainted, and contributed to inoculate is—*insincerity;* and, besides the bad effect thereby produced on the whole moral frame,—this vice, in so far as, on the occasion here in question, it has place, fails of producing the particular effect, for the production of which it was designed.

For this reason it is, that, in the Code, as above, care is taken to allow each individual, on taking the Declaration, to give equal publicity to a notification of his dissent as to any article or articles at pleasure: for which purpose, he will also, if so minded, have made known, antecedently to the Election, any such dissent, proposed amendment, or explanation, to Electors, to enable them to give their votes accordingly. For want of such openly declared reservation, declarations of this sort are apt to be regarded as no better than empty forms: and the matter, instead of being mended, is but made worse, by giving to the declaration the denomination of an *oath*.

Note as to structure of sentences. In contrariety to the general rule, as prescribed by general utility by which lengthiness in sentences is, on the score of obscurity, interdicted,—in the present instance, the ratiocinative matter is imbedded in, or

majority of the votes has been declared,—the person so elected will, in token of assent, read aloud with his name thereto subscribed, the *Legislator's Inaugural Declaration*, in all the several words in and by which it stands expressed in the sections hereinafter following.

Enactive.

ART. 2. In case of unavoidable absence on his part, by reason of sickness or other accidental cause,—as also to provide for the case, in which, without his knowledge, or without his consent, he has been proposed to be elected as if he had been a candidate,—any person,—acting on his behalf, with his consent, and in proof thereof, producing an exemplar thereof, signed by the proposed member, as above,—will, upon declaring, on his responsibility, the cause of such absentation, be admitted to read the Inaugural Declaration in his stead: saying, immediately before the commencement of such his reading—"I, (mentioning his name,) at the desire of A. M. (mentioning the member's name,) read this his Inaugural Declaration in his stead: and it is his desire, that the words of it be considered as his as effectually as if it had been by himself that they were read."

Enactive. Ratiocinative.

ART. 3. For prevention of insincerity, and that it may be left without excuse,—any person so elected may, in manner following, subjoin to the so attested exemplar of his Declaration, any such exceptions, or say expressions of partial dissent, and any such supposed amendments, and explanations, as he thinks fit.

Enactive. Instructional.

ART. 4. In this case, whatsoever be the words or clauses from which he means to state himself as dissenting,—or to which he is desirous of seeing any proposed amendment made or explanation given,—he will give indication of them, by enclosing them respectively in brackets, with a numerical figure, letter, or other mark of reference, which will accordingly be repeated at the commencement of such his statement.

At the same time, and in the same way, he will, if so minded, declare the considerations, which, in the character of *reasons*, have been the causes, by which such his dissent, or indication of supposed amendment, or requisite explanation, has been produced. But, (to prevent confusion,) in the exemplar in which such his reasons are written, he will not be at liberty to write more than [ ] lines in any one page, referring the overplus, if any, to a separate paper: which paper, if published, will be published by himself, and at his own expense.

Instructional.

ART. 5. Lest, by any such exceptions, amendments, or explanations, dissent to the essence of the declaration should, under pretence of assent, be virtually expressed,—any other member of the Legislative Body may, at the time that such supposed virtually dissenting member is taking his seat, move that he may be considered as virtually refusing to officiate as member thereof: whereupon, if such be the judgment of the Assembly, his election will be declared of no avail, and the appropriate arrangements will be taken for the election of another deputy in his stead.

SECTION II.

1. *Ends aimed at.*

I, A. L. in testimony of my attachment to the principles of the Constitution, do hereby make the solemn declaration following:

1. I recognise as the *all-comprehensive*, and only right and proper end of Government, the greatest happiness of the greatest number of the members of the community: of all without exception, in so far as possible: of the greatest number on every occasion on which the nature of the case renders it impossible, by rendering it matter of necessity to make sacrifice of a portion of the happiness of a few, to the greater happiness of the rest.

2. I acknowledge, as and for the *specific* and *direct* ends of Government, these which follow:—

I. Positive ends—maximization of subsistence, abundance, security against evil in every shape,—against evil from every source: against physical calamity, against human hostility; against hostility from external, against hostility from internal, adversaries; against hostility from internal resistible adversaries; against hostility from internal irresistible adversaries: for such, so long as they rule, and in proportion as they rule ill, are evil rulers: such,—unless by apt arrangements debarred from all hope of sinister success,—are and ever will be all rulers everywhere.

II. The all-comprehensive negative and *collateral* end of Government I acknowledge to be—avoidance or minimization of expense in every shape: in the shape of money; in the shape of unintended hardship; in the shape of intended hardship, intended for the purpose of punishment: minimization of expense,—as in the shape of punishment, so in the shape of reward and the matter of reward: seeing that, without certain hardship and eventual punishment, the matter of reward cannot be extracted from the grasp of individuals, and placed at the disposal of Government.

I acknowledge,—that, of all these indispensable ends, no one can be compassed, but by

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interwoven with, the enactive and instructional: use, purpose, and reason,—the rendering it manifest and undeniable, that this same ratiocinative matter has been actually present to the mind, of him whose approbation of it has been declared.

and in proportion to appropriate aptitude, on the part of the several functionaries of Government: more particularly on the part of those of the people's upper servants, of whom I am one: appropriate aptitude in all its several shapes, moral, intellectual, and active: appropriate intellectual aptitude, in its two several shapes—knowledge and judgment. Appropriate *moral* aptitude, I acknowledge, it will be my own fault if, on any occasion, I fail to invest myself with: namely, by taking for the guides of my conduct the several above-mentioned ends: appropriate *intellectual* and *active* aptitude it shall be my diligent endeavour to invest myself with, according to the measure of my faculties.

These same uncontrovertible ends of all good government, I once more acknowledge accordingly, and in these few words bring together and recapitulate:—*Greatest happiness of greatest number maximized; national subsistence, abundance, security, and equality maximized; official aptitude maximized: expense, in all shapes, minimized.*

Section III.

II. *Appetites guarded against.*

On my guard I will accordingly, on every occasion, keep myself, against the power of all those appetites, to the sinister influence of which, the inalterable nature of my situation keeps me so constantly and perilously exposed: appetite for power, appetite for money, appetite for factitious honour and dignity, appetite for vengeance at the expense of opponents, appetite for ease at the expense of duty.

Constant, in particular, will be my endeavours, to keep extinguished in my breast, all appetite for respect in every shape in which it is factitious. To pre-eminent respect at the hands of the community at large, I acknowledge no other title, than what is constituted by pre-eminent service:—service, proved and made universally manifest, by appropriate evidence. In the mass of those *honours*, or, as they are also called *dignities*, which are factitious,—I behold an instrument of unmerited triumph in the hands of those who share in them, of unjust depression on the part of all besides: the work of imposture, on the part of him by whom the draught for respect is drawn; of folly, on the part of him by whom it is paid.

Section IV.

III. *Economy and Uncorruption Promised.*

Unremitted shall, on every occasion, be my care, and my exertions, to keep the official establishment clear of all those drains, by which, in exorbitant excess, the substance of the people is drawn into the coffers of self-seated rulers, or unfaithful stewards: clear of all needless offices, of all useless offices, of all overpay of overpaid offices, of all dutiless offices, of all accumulation of offices in one hand: numbering among dutiless offices every case, in which, not serving in fact, a man serves in words, by deputy: the deputy being thus the working functionary, the principal an impostor, by whom money is obtained on a false pretence; nor moreover will I forget, that he who accepts a second office, holding at the same time one, for the exercise of which, the whole of his disposable time may eventually be requisite, manifests thereby his intention of neglecting the duties of one or both.

On the subject of official pay,—never will I cease to remember, that all pay, given to him who would serve equally well without pay, is given in waste: that the less a man is content to receive, for taking upon himself the duties of an office, the more conclusive is the evidence given, of his relish for the functions of it: that if, instead of receiving, he would be content to give, money for the occupation, the evidence would be still more conclusive,—the more so, the more he would be content to give for it: that the higher the pay of an office is, the greater the probability is, that the functions of it may be the object of his abhorrence, and every occasion embraced for avoiding the pain of exercising them: that, the higher the pay, the stronger the temptation to substitute,—and the more surely adequate the means, of substituting,—as far as possible, to the services due to the public, any such private occupations as to the individual are most agreeable: that, of the quantum of pay that will be satisfactory to a man, no other man can be so good a judge as he: that, if a comparatively indigent man is exposed to the temptation of breaking his trust for money,—so is the comparatively opulent man;—who moreover with more expensive habits, has proportionably augmented means of engaging accomplices and protectors: and that, as universal experience demonstrates, the most extravagantly paid of all functionaries have, everywhere, and at all times, been the most extravagant of prodigals, and the most rapacious of depredators.

Bearing in mind, that no desirable office, and in particular, that no lucrative office, can have place anywhere, without being a source of corruption;—of corruptingness in him by whom it is conferrible, of corruptedness in him by whom it is receivable;—bearing this in mind,—I will, were it only for this reason, keep my attention steadily bent, on the means of minimizing—as well the number, as the pay, of all such offices: never ceasing to remember, that, as waste produces corruption, so does corruption waste; till thus, by depredation, oppression, and dissipation, the body politic is exhausted, debilitated, destroyed.

In particular, in no act of waste, in no act of corruption, will I ever participate, under any such cloak, as that of *a pension of retreat:* never ceasing to remember, on how widely different a footing stands every such grant from

that of the compensation, granted to military men, for disablement incurred in military service: knowing, and duly considering, that no such pay without service is ever received or looked for, by him whose means of subsistence are composed of the retribution received by individuals for services rendered to individuals; remembering, that no physician has any pension of retreat from his patients, handicraft from his employers, or shopkeeper from his customers,—nor yet is there any want of physicians, handicrafts, or shopkeepers.

As little, under any such notion as that of affording *honour* to the nation, *dignity* to its functionaries, encouragement to piety, to learning, to arts, to sciences, and in particular to fine arts, or merely curious sciences or literary pursuits,—as little, under any such delusive pretence, will I concur in laying burthens on the comparatively indigent many, for the amusement of the comparatively opulent few: at their own expense will I leave them to pursue the gratification of their own tastes.

In the application made of punishments, never will I concur, in afflicting with factitious affliction, a fellow-citizen, for no other cause than that of his differing from myself, or from others, on a matter of opinion, or on a matter of taste. No such privilege will I arrogate to myself as that of deciding what things he shall or shall not believe, or by what things he shall or shall not be pleased. By no such means will I ever seek to constitute my opinion the standard of other men's opinions, my taste the standard of other men's tastes.

Never, on the occasion of the treatment to be given to delinquents,—never will I suffer myself to be guided by any other wish or rule, than that by which a surgeon is guided in the treatment given to his patients. No more will I be guided by anger in the one case, than he is in the other. Never will I concur in administering, to any such patient of mine, pain, in any quantity, exceeding the least, that, in my eyes, is sufficient, for preserving the whole community, himself included, from pain in some greater quantity.

In my endeavours for the maximization of official appropriate aptitude, on the part of the several functionaries of the state in their several situations,—I will not forget the keeping all candidates for office, subjected, in the most public and universally satisfactory manner, to the most demonstrative tests, which, in the case of each Department, and each function of that Department the nature of the duty admits of: nor, on the occasion of whatever provision may be made for their appropriate instruction, will I be unmindful of the incontestible truths—that the only effectual security for appropriate aptitude with relation to any office, is the rendering such demonstration of it an indispensable condition to the attainment of that same office,—and that, in proportion as, in addition to adequate means, adequate inducements for the attainment of such aptitude are found by individuals at their own expense, all provision for that purpose, at the expense of the public, is probable corruption, as well as certain waste.

SECTION V.

IV. *Notoriety of Law to all, promised.*

Mindful, that a portion of law, in relation to which, in proportion as it is known, it is known that execution will not be given to it, is no better than a dead letter; and that a law, in relation to which, while by some it is known, by others it is not known, that execution will be given to it, is so much worse than a dead letter as to be a cruel snare,—my sincere endeavours shall at all times be directed, to the keeping the field of Government clear of all such snares.

To this end, my anxious attention shall, at all times, be applied,—not only to the securing, to the text of the law, at all times, an extent corresponding and equal, to that of the whole aggregate of the obligations to which the people stand subjected,—but also to the keeping the whole mass of the law itself in such sort methodised and divided into parts, as that each individual may have in hand every portion of law in which he has a special interest in any shape, clear as possible of all matter in which he has not any such interest: the whole, in a form as clear, correct, complete, concise, and compact as possible: those parts of it, in which all persons have an immediate interest being, under all the variations which it may happen to them to undergo, kept in such a state, as that they may, without difficulty, form the matter of the earliest instruction administered in schools.

SECTION VI.

V. *Justice, accessible to all, promised.*

Mindful I shall ever be—that the services of Judicial functionaries, are the only instruments, by which execution can be given to the law, and security or redress to the citizen, against injury in any shape at the hands of internal adversaries.

Mindful, that upon this as upon any other sort of instruments, to impose a tax, is to deny the use of it to all who cannot pay the tax, and in this case to sell to all who can and will pay it, the power of employing the instrument in the destruction of those who cannot.

Mindful, that the effect of this denial is the same, whatever be the pocket that receives the produce of the tax.

Mindful, that to impose any such injury-promoting and security-denying prohibition, is to sell to the rich the means of irresistible and unpunishable aggression,—to deny to the poor the possibility of self-defence,—to establish oppression, to join in depredation, and to produce by law the evils of anarchy.

Mindful, that every particle of needless de-

lay and vexation, introduced or left by the Legislator or the Judge, in the proceedings, produces the afflictive and prohibitive effect of a tax, without the profit of it.

Mindful, that where no intention of injury has place, on either side, the effect of every such tax, and of every such neglect, is to heap affliction upon affliction on both sides.

Sensible I am, that a Legislator is accessory to every injury, against which he withholds protection, as well as to every injury to which he gives or leaves facility:—sensible, that he is the accomplice of every oppressor and every depredator, into whose hands he thus puts an instrument of injury, or in whose power he places a victim, by keeping the means of redress out of his reach.

Bearing all these things in mind,—I promise and declare, that, on no occasion shall my diligent endeavours be wanting, to the keeping at all times excluded from the system of Judicature, not only every particle of expense purposely imposed, but every particle of needless delay and vexation, which, for want of such attention, may be liable to have place.

Section VII.

VI. *Impartiality in Elections, promised.*

On the Election of the several Ministers, in the filling of whose situations a Member of the Legislature has a vote,—namely, the Prime Minister, the Justice Minister, and the Legislation Minister,—I will, on each occasion, after the fullest and most impartial inquiry and consideration in my power,—with scrupulous fidelity, give my vote, in favour of that individual, in whom, in my judgment, the aggregate of appropriate aptitude, in all its several branches, has place in the highest degree; and who accordingly is, in the corresponding degree, able and willing to give execution and effect to the ordinances of the Legislature, in so far as guided by the principles in this my Declaration manifested.

Section VIII.

VII. *In International Dealings, Justice and Beneficence, promised.*

On the occasion of the dealings of this our State with any other States,—sincerely and constantly shall my endeavours be directed to the observance of the same strict justice and impartiality, as on the occasion of the dealings of the Legislature with its Constituents, and other its fellow-countrymen, of this our State.

Never will I seek to add, to the opulence or power of this our State, at the expense of the opulence or power of any other State, any otherwise than, in the competition between individual and individual, each may, without injury, seek to advance his own prosperity in preference to that of the other.

All profit, by conquest in every shape, I acknowledge to be no other than robbery: robbery, having murder for its instrument; both operating upon the largest possible scale: robbery, committed by the ruling few in the conquering nation, on the subject many in both nations: robbery, of which, by the expense of armament, the people of the conquering nation are the first victims: robbery and murder, the guilt of which, as much exceeds the guilt of the crimes commonly called by those names, as the quantity of suffering produced in the one case exceeds the quantity produced in the other.

Seeing, that in all war, it is only through the sides of the unoffending many that the guilty few can ever receive a wound,—never will I, for any other purpose than that of national self-defence, or receipt of compensation for pecuniary damage actually sustained, consent to make war on any other State: nor yet for pecuniary damage, till all endeavours for the obtainment of compensation, in the way of arbitration or other means less destructive than general war, are hopeless: nor unless, if not prevented by war, future injury from the same source as the past, is actually apprehended by me.

Never will I consent to the receiving, under the dominion of this our State,—even though it were at the desire of the inhabitants,—any portion of territory, situate at any such distance from the territory of this State, as to prevent any of the wants of the inhabitants of such other territory, from receiving, at the hands of the Supreme Legislature of this our State, relief as effectual, as that which they could receive, were their places of habitation situated within the pristine limits of the territory of this our State: regarding, as I do, all such dominion, as no better than an instrument, and device, for the accumulation of patronage and oppressive power, in the hands of the ruling few in the dominating State, at the expense, and by the sacrifice, of the interest and felicity, of the subject many, in both States.

No recognition of superiority, on the part of this our State, in relation to any other State, will I ever seek to procure, or consent to receive: no factitious honour or dignity will I seek to procure, or consent to receive, for this my own State, or any of its citizens, at the hands of any other State.

I acknowledge all honour to be false honour, all glory to be false glory, all dignity false dignity,—which is sought to be advanced, or maintained, at the expense of justice, probity, self-regarding prudence, or effective benevolence: I acknowledge all such words to be words of delusion, employed by rulers, for the purpose of engaging subject citizens to consent, or submit, to be led, for the purpose of depredation, to the commission of murder upon the largest scale: words, which, as often as they are employed, will, in proportion as the eyes of men are open to their true interests, reflect dishonour, more and more intense and exten-

sive, on all those by whom they are thus employed.

On every favourable occasion,—my endeavours shall be employed to the rendering, to the subjects, and for their sake to the constituted Authorities, of every foreign State, all such positive good offices, as can be rendered thereto, without its being at the expense of some other State or States, or against the rightly presumable inclination, as well as at the expense, of the majority of my fellow-countrymen, in this our State.

Never, by force or intimidation, never by prohibition or obstruction, will I use any endeavour to prevent my fellow-countrymen, or any of them, from seeking to better their condition in any other part, inhabited or uninhabited, of this globe. In the territory of this State, I behold an asylum to all: a prison to none.

SECTION IX.

VIII. *Impartiality, in the general exercise of power, promised.*

On every occasion, in the exercise of this my vocation, sincere and anxious shall be my endeavour, to keep my mind as clear as may be, of undue partiality in every sense: of partiality in favour of any class or individual, to the injury of any other: of partiality, through self-regarding interest: of partiality, through interest inspired by sympathy: of partiality, through interest inspired by antipathy: more particularly will I be on my guard against partiality in favour of superiors, to the prejudice of inferiors: of superiors, in whatsoever scale of comparison: opulence, power, reputation, talent—natural or acquired.

In my conduct towards my fellow-countrymen, I will, on every occasion, in this my situation, apply my closest attention to the observance of the same strict rules, as if it were that of a Judge. Acting as a Legislator, I acknowledge myself to be acting as a Judge; bound, to the observance of the same inflexible impartiality in this case as in that: bound—but by ties, as much stronger, as the number of the persons, whose happiness is at stake, is greater.

SECTION X.

IX. *Assiduity, promised.*

Mindful, that by absentation, half the effect of a vote on the wrong side is produced, I will not, on any occasion, by plea of sickness or other excuse, seek to exempt myself from the obligation of attendance.

SECTION XI.

X. *Subordination to the Constitutive Authority, promised.*

Never, except for the avoidance of determinate and clearly preponderant evil,—nor for that purpose but during the absolutely necessary time,—never will I concur, in withdrawing the proceedings of the Legislature, from the view and scrutiny of the people: the people its Constitutional superiors: the people—the only legitimate source of power: the people, by whose authority, for whose sake, and at whose expense, all power, conferred by this our Constitution, has been created.

SECTION XII.

XI. *Encroachment on subordinate Authorities, abjured.*

Sensible, that, if duly fulfilled, the duties specially attached to the situation of Member of the Supreme Legislative, never will or can cease to be sufficient to occupy the whole of a public man's disposable time,—and that nothing but disobedience, tardiness, inaptitude, or casual and momentary want of time, on the part of Subordinates, can create, on the part of the Supreme Legislative, any such necessity as that of assuming to itself, in the whole or in part, business belonging to any one of their several departments:—strictly and constantly will I keep myself on my guard against every such temptation as that of acting, without necessity, in any part of the field of service belonging to any one of those several subordinate authorities; sensible, how prone, for want of such due caution, man in authority is to afford, in this way, to the appetite for patronage and oppressive power, an irregular and mischievous gratification. Saying this, I have in mind, in a particular and distinct manner, the functions and branches of business belonging to the several Departments subordinate to the Legislature; namely, the Administrative, the Judicial, and the Sub-legislative.

SECTION XIII.

XII. *Insincerity, abjured.*

Never, by deception or delusion in any shape,—never will I seek, to compass any point, either in the framing of Legislative ordinances or other authoritative instruments, or in debate. In all such discourses, my endeavours shall be constantly directed to the giving to them the greatest degree of *transparency*, and thence of simplicity, possible.

On every occasion, it shall be among the objects of my endeavours, to keep my own discourse, and, as far as depends upon myself, the discourse of others, as pure as may be from the taint of fallacy: of fallacy in every shape; and in particular, in those shapes in which it is delineated in the Table of Fallacies, which, to this purpose, is kept hung up, to serve as a perpetual memento, for the use of all hearers, as well as of all speakers: of all persons judging, as well as of all functionaries judged.

Section XIV.

XIII. *Arrogance, abjured.*

Acknowledging that I am but an Agent, chosen by my Constituents, to bear a part in the managing of such of their concerns, as the nature of the case places them under an incapacity of managing for themselves,—I arrogate not to myself any superiority over them, or any one of them, on that score.

Of no power or influence attached to my situation, will I ever avail myself, to any such personal and sinister purpose, as that of creating dependence, or exacting or receiving homage. To avoid wounding, by haughtiness of demeanour, the sensibility of such of my fellow-citizens, whose business brings them into communication with me, shall be among my sincere and constant cares.

CHAPTER VIII.

PRIME MINISTER.

Section I.

Fields of Service.

Art. 1. Co-extensive with that of the Legislative is the Prime Minister's *local* field of service.

Enactive.

Art. 2. Under the Legislature, to the Prime Minister's *logical* field of service belongs, as per Ch. iv. Art. 4 and 5, whatsoever portion of the *Legislature's* logical field of service does *not* belong to the *Judiciary* Department, headed by the *Justice Minister*. For the particulars of the Prime Minister's service in this field, see sections 2, 3, 4.

Expositive.

Art. 3. By the Prime Minister's logical field of service, understand that ideal space, within which is to be found the aggregate of the several *persons* and *things* constituting the subject-matter of the *operations* performed, and correspondent functions exercised by him,—together with the aggregate of the *operations*, which he is *empowered* to exercise, in relation to those same *persons* and those same *things*.

Expositive.

Art. 4. So, also, in the case of the several Ministers: as per Ch. ix. Ministers collectively. Section 2. *Ministers and Sub-departments.*

Ratiocinative.

Art. 5. *Question. Prime Minister* why thus denominated?

Answer. Reasons. Because by this denomination, his situation is more appositely designated than by any other: and, by incorrect ideas,—if associated with the denomination of the functionary occupying so important a situation,—evil results in practice would, to no inconsiderable amount, be liable to be produced.

Ratiocinative.

Art. 6. *Minister* is from the Latin, and means *servant*. All functionaries belonging to the Administrative are, as such, *servants*—located and dislocable servants—of the *Legislature:* so much for the word *Minister*. In this same Department, of all other functionaries belonging to it, this functionary is the *superordinate:* so much for the adjunct *Prime*. He is, to those immediative servants of the *Constitutive*, what, in a Monarchy, the functionary of this same name is to the Monarch. Thus it is, that, with reference to one of those different authorities, his is subordinate; with reference to the other, superordinate.

Ratiocinative.

Art. 7. For significance and adequacy, no other denomination can compete with this. By the Spanish denomination *Gefe Politico* (Political Chief,) employed in some cases, *superordination* only is presented to view: *subordination*, not.

Ratiocinative.

Art. 8. So as to the denomination *President:* a denomination which, from the *precedent* set in the Anglo-American United States, has been but too extensively adopted. To this denomination, that same objection of *inadequateness*, that is to say, of *incompleteness*, from whence comes *incorrectness*, applies with equal force.

Ratiocinative.

Art. 9. In the case of these same United States,—it is on another account inapposite. To *preside*—from the Latin *præ* and *sedeo*—is to *sit before*, or *above*, a number of other persons, who, in the same place, are sitting at the same time. Now, this is what the President of the United States never does, nor ever can do. He is on purpose, and to a very wise purpose, placed at a perpetual distance from Congress, the body with which he communicates, and from which he receives mandates. By "*Message*" only—*that* is the word—are communications to them made by him. Thence comes the good consequence that, never taking part in their Debates, never does he expose himself to those angry feelings and imputations of sinister conduct, from which, consistently with the nature of man, and the nature of the case, debates, especially when on political subjects, can seldom be altogether free.

Instructional.

Art. 10. The conception, naturally presented by the name *President*, to foreigners, is *that* of a person sitting in Congress, *presiding* over the proceedings of its two Assemblies, or one of them, just as the sort of functionary, called

in English the *Chairman*, does in all formal meetings, private and non-official, as well as public and official. By men of the United States, this misconception has every now and then been noted as a mark of relative ignorance on the part of the thus misled foreigners. But the error, such as it is, lies, (it has been seen,) at the door—not of the foreigners, but of the natives. The *foreigners* take the word of the *natives*, and by this confidence it is that they are led into the mistake. The natives, at the same time, lose the credit of the arrangement, and the foreigners the benefit of the instruction derivable from it: they even receive misinstruction instead of it.

SECTION II.

Functions.

Enactive.

ART. 1. To the Prime Minister, exercisable within his logical field of service, belong the functions following: namely,

1. *Executive* function. Exercise is given to it, in so far as, within that same field, he gives execution and effect, to any ordinances, emanating, whether immediately or unimmediately, from the Legislature: thus giving corresponding execution and effect to the rightly presumed will of the Constitutive.

Enactive.

ART. 2. II. *Directive* function. In the exercise of this function,—by him, is the business of the Administrative Department conducted: by him, with the assistance of the several Ministers and their respective subordinates, performed. Under his direction they all are. In their functions may be seen his functions. For theirs, see Ch. ix. Section 4, and Ch. xi. in the several sections headed by the names of their respective officers.

Enactive.

ART. 3. *Locative function.* In the exercise of this function, by him are the Ministers, all of them, located.

Expositive.

ART. 4. *Promotion* is *location:* location to wit, in a situation higher than that which, before such promotion, the person so promoted occupied.

Enactive.

ART. 5. *Dislocative function.* In the exercise of this function,—by him are the Ministers, all of them, eventually dislocable:—provided that in the room of each one dislocated, a successor is by the same act, lest the service of the Sub-department should be at a stand, located: provided also, that any person who is then officiating, or has officiated, in the situation of Depute in that same office, as per Section 4, may be so located, in such sort, that his *term of service*, as per Section 5, in the situation of Minister Principal, shall continue, until the operations preliminary to location, as per Ch. ix. MINISTERS COLLECTIVELY, Section 16, *Locable who*, and Section 17, *Located how*, have been gone through, and no longer.

Enactive.

ART. 6. So likewise their respective subordinates of every grade.

Expositive.

ART. 7. *Suspension* is *temporary dislocation.*

Enactive.

ART. 8. *Imperative* function. In the exercise of this function, to him belongs the command in chief of the whole *Land Defensive force.* For its constituent parts, see Art. 8, 9, and Ch. x. DEFENSIVE FORCE.

Enactive.

ART. 9. So, of the whole of the *Sea Defensive* force. As to this, see Ch. x. Section 16, *Sea Defensive force.* As to other functions, see Section 3, *Relation to Legislature*, and Section 4, *Self-suppletive function.*

Enactive.

ART. 10. Power in relation to grades. As to those in the *Radical* or say *Non-stipendiary* Land force, or in one word *Militia*, see Ch. x. Section 3.

Enactive.

ART. 11. As to those in the *Ingrafted*, or say *Stipendiary* Land Defensive force, or in a word the *Stipendiary* branch of the *Army*,—of every functionary thereto belonging, the grade is at all times at his entire disposal. Private or officer, he may at any time either locate, or to any superior situation, without exception, promote. So also, to any co-equal situation, transfer. So also suspend, or, subject to appeal as per Art. 16. dislocate.*

Instructional.

ART. 12. To be an apt possessor of this function, it is not necessary that the functionary should be a military man. In the United States' Constitutional Code, these same offices

* Still more unlimited, according to the construction put upon the clause in question, (namely, United States' Constitution, Article 11, Section 11, Clause 1,) is, I have been assured by distinguished functionaries, the power understood to belong to the President in relation to the whole defensive force of the Union, including Army and Navy of the Union, and Militia of the several States "when called into the actual service of the United States." Yet, for this construction, the only support I can find is that afforded by the words, "*Commander in chief.*" Edition of 1811. Bookseller, Jonathan Forbes. Place, Winchester. Say *more unlimited* the power, because in that case there is no such Appeal clause as in the present case, by Art. 13.

are given to the President: and, since Washington's time, no military man has borne that office: the object is—to place the force, in case of necessity, at his disposal. On any such occasion he would act, of course, by professional advice.

Enactive.

Art. 13. So, as to the Stipendiary Sea Defensive force: or in one word *Stipendiary Navy.*

Enactive.

Art. 14. Except it be in the actual presence of an enemy,—every such act of location, promotion, transference, dislocation, and suspension, must, to be valid, be evidenced by an instrument, authenticated by his signature; or, if in the presence of an enemy, as soon afterwards as may be.

Enactive.

Art. 15. Of every such instrument, exemplars* will, in the way of *manifold writing*, as per Section 9, be written and disposed of as follows:

1. Kept in the Prime Minister's Office, one.
2. Kept by the Prime Minister himself, one.
3. Delivered with all practicable promptitude to the functionary so located, promoted, transferred, dislocated, or suspended, one.
4. Transmitted to the Registrar,—of the Office, into, in, or from, which the location, promotion, dislocation, or suspension has been made, one.
5. In case of promotion,—transmitted to the Registrar of the Office, from which the promotion has been made, one.
6. Transmitted to the Legislation Minister's Office, one.

Enactive.

Art. 16. Any person,—who, by any such act of location, promotion, transference, dislocation, or suspension, regards himself as aggrieved,—may, for redress, or clearance of his character, apply as per Ch. ix. Ministers collectively, Section 21, *Oppression obviated.* But, how completely soever cleared, by no decree of the Judicatory so constituted will he be relocated. Whether to relocate or not, the Prime Minister, on perusal of the evidence, will, on his responsibility, determine.

Section III.

Relation to the Legislature.

Enactive.

Art. 1. Exceptions excepted, no otherwise than by epistolary discourse, to wit, by Message, does the Prime Minister address the Legislature. For reasons, see Section 1, *Fields of service*, Art. 9. No place has he in the Legislation Chamber. For the places which the several Ministers have therein, see Ch. ix. Ministers collectively. Section 24, *Legislation-regarding functions.*

Enactive.

Art. 2. Exception is—if, on some extraordinary occasion, for the purpose of explanation, he has been invited or ordered by the Legislature to a personal conference.

Enactive.

Art. 3. On the occasion of a Message sent by him to the Legislature, functions exercisable by him are the following:

I. The *Informative:* to wit, when an occasion occurs, on which the Legislature has need of information concerning a state of things, the particulars of which would not otherwise be so clearly, correctly, comprehensively, and trust-worthily learnt from any other quarter.

Enactive.

Art. 4. Examples are—

1. A state of things resulting from a negotiation with an Agent of any foreign power.
2. Facts indicative of need of melioration, in the constitution of any part of the Official establishment, or in the conduct of any functionary thereto belonging.

Enactive.

Art. 5. II. The *Indicative* or *Suggestive* function. In the exercise of this function, he proposes, in *general* terms, subject-matters for the consideration of the Legislature.†

Enactive.

Art. 6. III. The *Initiative* function. In the exercise of this function, he proposes, *in terminis*, the tenor of any proposed ordinance or order, which, with or without amendment, appears to him to be in its purport, fit to receive the Sanction of the Legislature.†

Enactive.

Art. 7. Of the exercise of this function, the effect may be produced by the Prime Minister, either by Message in his own name,—or through the instrumentality of a Minister, in the name of the Minister,—or through the instrumentality of a Deputy, in the name of the Deputy.

Enactive.

Art. 8. For any definite and serious evil, which can be shown to have had place, or to be in imminent danger of taking place, for want of his having given exercise to any one of the above functions, he is responsible.

Instructional.

Art. 9. Except where, for release from this responsibility, it may be advisable for him to

* [*Exemplars.*] Not copies, nor transcripts: they being all alike originals.

† In the Anglo-American United States, such is the practice.

communicate, by Message,—communication by the instrumentality of a Minister, in the name of the Minister, if consenting and approving, will be the more eligible course: to wit, in respect of its leaving the freedom of the Assembly less exposed to disturbance.

Enactive. Instructional.

ART. 10. IV. The *Statistic function.* In the exercise of this function, at the commencement of every year,—the Prime Minister will, in the form of a Message, lay before the Legislative Assembly, the general condition of the State, according to his view of it, pointing their attention, in general terms, to any measures which present themselves as conducing to the conservation or the melioration of it.

SECTION IV.

Self-suppletive function.

Enactive.

ART. 1. Lest the business of his office should be at any time at a stand,—to the Prime Minister belongs the power of *self-supply;* with the obligation of keeping it in exercise. It is exercised by the location of an at all times dislocable *Depute.*

Expositive.

ART. 2. By a *Depute,* understand in this case a functionary, who, being thus located and dislocable, exercises, on the occasions on which the business would otherwise be at a stand, the functions belonging to the office; location of subordinates excepted.

Enactive.

ART. 3. These occasions are—

1. Inaptitude of the Principal, by reason of infirmity, whether of body or mind.
2. Vacancy of the office.

Enactive.

ART. 4. Exception excepted, as per Art. 2, to every branch of the service of the Principal, does the power of the Depute extend.

Enactive. Ratiocinative.

ART. 5. Punitionally, as well as compensationally and dislocationally, for the acts of the Depute, is the Principal responsible. By acceptance of the office,—not simply for performance, but for apt and complete performance, of the functions, does he contract: irresponsible, he might safely commit any breach of trust, in any shape, by the instrumentality of any person consenting to subject himself to the risk.

Expositive.

ART. 6. *Punitionally:* that is to say, to the purpose of being subjected to punishment,—suffering under the name of *punishment, over and above* the suffering produced by the exaction of *compensation:* or, *in lieu* of it, in those cases in which compensation cannot have place: for example, where there is no individual specially wronged. *Compensationally:* that is to say, to the purpose of being compelled to yield compensation. *Dislocationally:* that is to say, to the effect of being dislocated.

ART. 7. Within [ ] days after his own location, a Prime Minister is expected to locate such his Depute: and thereafter, immediately upon the dislocation of a preceding, a succeeding one.

Enactive.

ART. 8. The instrument of location, with the year, month, and day of the month, will be signed by the principal, and in token of acceptance, by the Depute. Exemplars three: disposed of as per Section 1. Art. 15. Nos. 1, 2, 3.

Enactive.

ART 9. The Principal and the Depute will not officiate at the same time. The power of this office must not, without necessity, be shifted from hand to hand. If, on any day, an instrument has been signed by the Principal, an instrument signed on that same day by the Depute is of no validity; unless on the sudden incapacity or death of the principal: in either of which events, in case of urgency, an instrument, signed by the Depute, stating the event and declaring the urgency, may be valid. But, in this case, the Principal cannot act on the same day as that on which, by the act of his Depute, he has, as above, been declared incapable.

Enactive.

ART. 10. On the decease of the Principal, the functions of the office, the locative excepted, as per Art. 2, are exercised by the Depute, until a successor has been located; to wit, as per Section 3, by the Legislature.

Enactive.

ART. 11. Dislocable at any time is the Prime Minister Depute by the Principal: as likewise by either of the authorities by which the Principal is dislocable.

SECTION V.

Term of Service.

Enactive.

ART. 1. Of a Prime Minister, the term of service is [four] years.

Enactive.

ART. 2. No Prime Minister is re-eligible, until there are in existence, at the same time, out of whom choice may be made [two ro three] quondam Prime Ministers, he being one.

Enactive.

ART. 3. [ ] Days before the cessation

of a Prime Minister's term of service, the election is performed: as to which, see Section 8.

Enactive.

Art. 4. If, antecedently to the expiration of a Prime Minister's term of service, the Legislature has omitted to make a fresh Election, the omission is, on the part of all by whose default it has had place, an anti-constitutional offence, tending to substitute a Representative Democracy, Monarchy, or Aristocracy; and, punitionally, as per Ch. vi. Section 28, as well as dislocationally, every offender is responsible.

Section VI.

Remuneration.

Enactive. Ratiocinative. Instructional.

Art. 1. The Prime Minister's pay is [ ] a-year, paid quarterly in advance. From *unwilling* hands, receipt of ulterior emolument is *extortion:* from *willing, corruption.*

Instructional.

Art. 2. As to this possessor of the supreme single-seated situation, note, that though he is at all times subordinate to the majority of the Members of the Legislature in their aggregate capacity, yet is his power incomparably greater than that of any one, taken apart: inferior, in respect of his dislocability,—he is *superior* even to the *whole* Legislature, in respect of the agreeable and desirable nature of one part, to wit, the *locative* part, of the power exercised by him,—the *extent* to which, and *frequency* with which, the exercise of it is called forth, and the longer *duration,* as per Section 5, of his *term of service.*

Section VII.

Locable who.

Enactive.

Art. 1. Exceptions excepted,—in this office, any person, who, in the judgment of the Legislative authority, is, in respect of all points of appropriate aptitude taken together, most apt, is locable.

Enactive.

Art. 2. Excepted are,

I. All Monarchs, and every person, connected by any known tie of consanguinity, or affinity, with any Monarch.

Enactive.

Art. 3. II. Every person, who has not, either in a resident or migratory state, passed at least [ ] years, in some part or other of the territory of this State.

Section VIII.

Located how.

Enactive.

Art. 1. Located is this functionary, by those, to whose will it belongs to him to give execution and effect. He is located by the Legislature.

Enactive.

Art. 2. Next after pronouncing respectively the Inaugural Declaration, as per Ch. vii. or their adhesion thereunto,—the Members of the Legislature proceed to vote for the Election of the Prime Minister. The votes are given—first in the secret mode, as per Election Code, Section 8, *Election how:** then immediately in the open mode.

Enactive.

Art. 3. Given in the secret mode, the votes are not counted, looked at, or in any other manner, any of them, known,—till after the result of the votation in the open mode has been declared.

Enactive.

Art. 4. If, of the two different modes, the results be in favour of different persons, he who has the majority in the open mode is located.

Enactive.

Art. 5. If he who, in the open mode, has the *comparative* majority, has not the *absolute* majority,—he, and the person whose number of votes comes next to his, are thereupon voted for, without the others. On this latter occasion, in case of equal numbers, lot decides. For the mode, see Ch. ix. Ministers collectively. Section 17, *Located how.*

Instructional.

Art. 6. For the sake of instruction by experience, is this double mode of election here proposed. Neither in the shape of delay, vexation, or expense, nor in any other shape, does *evil* present itself, as likely to be produced; at any rate, in quantity, capable of outweighing the *good,* attached to whatsoever *instruction* may be the result. Of this instruction, the particular nature seems not, however, very easy to be anticipated. By the *open* mode, each man's vote is subjected, at the same time, to the *seductive* influence of his *Co-Deputies,* and of the several *Candidates,* for the situation to be filled: on the other hand, so is it to the *tutelary* influence of the *Public-Opinion Tribunal,*—organ of the Constitutive authority. By the *secret* mode, it is exempted from both these antagonizing influences: on the other hand, it is subjected to the *seductive* influence of the personal interests, and affections sympathetic and antipathetic, of each individual voter. After a certain length of experience

* See vol. iii. p. 577.

—the Legislature for the time being, under the guidance of the public voice, will be in a condition to pronounce, on the ground of experience, between the *three* competing modes: to wit, the two simple ones, and the compound, composed of both.

From the application of the same course of experiment to the *Prime Ministers* of the several Sublegislatures, the instruction obtainable from this source will, in the proportion of their number, receive diversification and increase.

SECTION IX.

Dislocable how.

Enactive. Ratiocinative.

ART. 1. Dislocable is this functionary at any time, by that authority, for the giving execution and effect to whose will, he has been located. He is dislocable by the Legislature.

Enactive. Ratiocinative.

ART. 2. So, by the Constitutive authority, as per Ch. v. Section 2.

Enactive.

ART. 3. Other efficient causes of dislocatedness in this case, are the same as in the case of a Member of the Legislature, as per Ch. vi. LEGISLATURE. Section 30, *Dislocable how*, No. 1, 2, 3, 4, 5, 7.

SECTION X.

Registration System.

Enactive. Ratiocinative.

ART. 1. For the more commodious, correct, prompt, uniform, and all-comprehensive performance of the process and function of Registration in all the several departments and subdepartments,—as likewise on the part of the Prime Minister, for the correspondent receipt by him of all documents, the receipt, and, as occasion calls, the perusal of which may be necessary to the most apt exercise of the several functions belonging to his own office,—he will, as soon as may be, cause to be established and employed in practice in the several offices of the several departments and their sub-departments, the Sublegislative included, the mode of writing styled the *Manifold* mode.*

Ratiocinative. Instructional.

ART. 2. Particular uses of the manifold mode of writing are as follows—

By the multitude of exemplars, produced at an expense, which, with the exception of that of the paper, is less than the expense of two in the ordinary mode, it affords means for furnishing, at that small expense, to parties on both sides, for themselves and assistants, all such documents as they can stand in need of.

Ratiocinative. Instructional.

ART. 3. Every exemplar being, to an iota, exactly and necessarily the same as every other, —the expense of revision by skill and labour is thereby saved, as well as *unintentional aberration* rendered impossible.

Ratiocinative. Instructional.

ART. 4. An exemplar, kept in the Registrar's Office, will serve as a standard, whereby a security will be afforded against all *intentional* falsification, on the part of the possessor of any other exemplar.

Ratiocinative. Instructional.

ART. 5. By the reduction thus effected, in the expense of all judicial writings, emaning from the Judicatory,—the protection, afforded by Judicature in its best form, to wit, that which has for its ground orally elicited and immediately minuted evidence, will be brought within the reach of a vast proportion of the whole number of the people, to whom it could not otherwise be afforded.

Ratiocinative. Instructional.

ART. 6. A collateral benefit—a degree of security hitherto unexampled, against *destruction* of judicial documents, by *calamity* or *delinquency*, may thus be afforded, by the lodging of exemplars, in divers offices in which they would be requisite for other purposes: exemplars of documents from the Immediate Judicatories being, at the Appellate Judicatory, requisite for the exercise of its judicial functions; and, in the office of Justice Minister, for the exercise of his inspective and melioration-suggestive functions. So also in the other Departments.

Instructional.

ART. 7. To save the expense of custody, and prevent the useful from being drowned in the mass of useless matter,—the Legislature will make arrangements for the periodical destruction or elimination of such as shall appear useless: care being at all times taken for the preservation of all such as can continue to be of use, either eventually for a judicial purpose, or for the exercise of the statistic and melioration-suggestive functions, as per Ch. ix. MINISTERS COLLECTIVELY, Sections 9, 11, 12; Ch. xi. MINISTERS SEVERALLY, Section 2, *Legislation Minister;* and Ch. xii. JUDICIARY COLLECTIVELY, Sections 19, 20, 21, 22.

SECTION XI.

Publication System.

Expositive.

ART. 1. By the *publication system*, under-

* In the original edition there is here a description of the mode of executing manifold writing, which will be found already printed in vol. v. p. 406.—*Ed.*

stand that, by which the several matters of fact, acquaintance wherewith is in any wise material to the business of the Sub-department or Department in question, are rendered, or endeavoured to be rendered, at all times, present, to the mind of every person in whose instance such presence is likely to be in any way of use. The greater the *number* of the persons, to whose minds, at any given point of time, it is actually made present, the greater the *extent* given to the *publication*—to the *publicity* thus effected.

Enactive. Instructional.

Art. 2. Exceptions excepted,—in every Sub-department and Department, and in every Office belonging to each Sub-department and Department, publicity will at all times be maximized.

Instructional.

Art. 3. Exception 1. The evil, produced by the unavoidable *expense*, preponderant over the good produced by the extent proposed to be given in the instance in question to the publicity. Antagonize thus one with another the two principles, and the rules respectively prescribed by them.

Rule 1. *Maximize publicity.*

Rule 2. *Maximize frugality.*

Rule 3. By every deduction made from the amount of the expense, the *extent* given to publicity may, with clear advantage, be increased. Hence, one advantage of the *manifold writing mode*, as per section 10, *Registration System.*

Instructional.

Art. 4. The *good* produced by publicity is of two sorts: to wit, 1, the *general;* 2, the *particular.* The *general* consists in the efficiency it gives to the force of the law, and to that of the Public-Opinion Tribunal: to wit, in the character of an instrument of security for appropriate aptitude on the part of all public functionaries: the *particular* consists in the particular use derivable from the information, afforded concerning each particular matter of fact, to the several individuals, whose happiness may be promoted, or their conduct beneficially influenced by it.

Instructional.

Art. 5. Exception 2. Where, in this or that particular case, in addition to the evil of *expense*, if any, the evil of the publicity would, in the instance of this or that particular person or class of persons, be preponderant over the good.

Instructional.

Art. 6. Of the Sub-departments in which this preponderance is most apt to have place, examples are the following:

1. The *Constitutive Department:* to wit, in respect of the evil that would result from its being known which way the several voters, or any of them, gave their votes. For the reasons for which the evil of publicity would, in this instance, be destructive of the Constitution, and not accompanied by good in any shape, see Election Code, *Preliminary Explanations* (vol. iii. p. 558.) The thing requisite is—that, of each voter, the *inward* wish be expressed by his vote: to wit, on the presumption, that, in so far as, by the direction given to it, he sees no probability of advancing his own at the expense of the general interest, he will give to it such direction as, according to what he thinks or has heard, will be most for the advantage of the general interest. But, in so far as this direction were known, and he apprized of its being so, the wish expressed by his vote would be—the wish of whatever person he had most to fear or hope from: and, as the number of the persons, who have most to fear or hope from a man, will be in the conjunct proportion of his legal power and his opulence,—hence, supposing votes public, a constitution, democratical in *appearance*, may be aristocratical in *effect:* and the happiness provided for—not that of the *many*, but, at the expense of the many, that of the *few.*

2. The *Army Bis-subdepartment:* to wit, by making known to the enemy of the State the strong and the weak points of its means of defence.

3. The *Navy Bis-subdepartment:* the two together constituting the *Defensive Force Sub-department:* to wit, by information given as above.

4. The *Preventive Service Sub-department:* to wit, in respect of the like information given to delinquents.

5. The *Health Sub-department:* to wit, in respect of any such evil as may be liable to result from its being known who the persons are who have been labouring under any disease to which disrepute is attached.

6. The *Foreign Relation Sub-department:* to wit, by information given, to those, who at any time are *liable* to become *enemies*, and who are at all times, *in one way or other, rivals.*

7. Add the *Judiciary Department*, as to which, see Ch. xii. Judiciary collectively. Section 14, *Publicity, &c.*

Instructional. Ratiocinative.

Art. 7. In each several case, in so far as secrecy is provided for, the assumption is—that, in that case, publicity would be liable to become subservient to hostile purposes:—to the support of this or that interest, in hostility with the interest of the greatest number in this State. In the case of the *Defensive Force* and *Preventive Service Sub-departments*, the effect of the publicity might, if extended to certain persons, be the giving aid to hostile designs already entertained, and endeavoured to be carried into effect: in the case of the *Foreign Relation Sub-department*, it might be—either the giving aid to such designs, if al-

[illegible] even the giving birth to

[illegible] *Ratiocinative.*

[illegible] such case,—a point of *time* [illegible] ascertainable, after which the [illegible] by publicity, will have [illegible] producible. But, at no time [illegible] produced by publicity cease to [illegible]. For, at no time can the [illegible] judiciary power of the Public- [illegible] that judicial power to which [illegible] furnishes its necessary evidence [illegible] needed. If it be known, that, [illegible] of the particular demand [illegible], it will cease,—the obstruction [illegible] to the operation of the legal as [illegible] Opinion Tribunals, and the evil [illegible] by it, will be minimized, and the [illegible] reduced.

Instructional.

[illegible] Thus it is—that, under this system, [illegible] of the *publicity* thus requisite [illegible] explained,—and thence to the corres- [illegible] and necessarily previous *registration*, [illegible] are no limits,—other than those which [illegible] to it by one or other of two considera- [illegible] the one is—the *expense* necessitated by [illegible] operation; a consideration which applies [illegible] cases: the other is—the demand for tem- [illegible] secrecy;—a demand, the nature and ex- [illegible] of which are produced and regulated by [illegible] special causes, depending on the nature [illegible] business of the department or sub-de- [illegible]partment.

Ratiocinative. Instructional.

Art. 10. As there are not any limits other than as above, to the extent of the demand for publication, so neither are there to that of the good derivable from it. As to this, see the sections intituled *Securities, &c.* in Ch. vi. Legislature; Ch. viii. Prime Minister (this present chapter); Ch. ix. Ministers collectively; and Ch. xii. Judiciary collectively. Ch. xxv. Local Headmen; Ch. xxvi. Local Registrars. For particulars, in the case of the Administrative Department, see Ch. ix. Ministers collectively: Section 7. *Statistic function.*

Expositive.

Art. 11. Considered in respect of its *extent*, publication may be distinguished into *internal* and *external*.

Understand by *internal* or say *special*, that mode of publication, the operation of which is confined to the particular official situation, or the particular Sub-department, in the course of the business of which the facts in question came into existence; by *external*, that produced by the conveyance of the information, to persons other than those belonging to, or having business with, that same Office, Department, or Sub-department: of external publicity the benefit therefore is not confined to any other limits than those which apply to the numbers of mankind at the time in question, and all succeeding ones.

Expositive. Instructional.

Art. 12. Of internal publication, the appropriate *instrument* will be the *manifold writing apparatus*, as per Section 10; of external, *the printing press*, by which to the degree that has been seen, the expense is diminished.

Instructional.

Art. 13. To both these modes and degrees of publication, the *Registration System* is not only subservient but necessary; and in this subserviency may be seen its only uses, over and above those which consist in the information, which, in the case of each official situation, is afforded, to the functionary, by whom, at the time in question, it is occupied.

Instructional.

Art. 14. Rules for limitation of the exceptive rules, by which secrecy is prescribed.

Rule 1. The exemption from publication should not go beyond the reason for it: the concealment, beyond the demand for concealment: that is to say, beyond the extent of the evil liable to be produced by divulgation.

Rule 2. The evil from divulgation depends partly upon the situation of the *persons* by whom the information is received; partly upon the *time* at which it is received.

Rule 3. Limitation as to *persons*. In the case of a Department or Sub-department, the business of which may present a demand for secrecy,—the exclusion from information should not extend to any functionary, in whose instance information is necessary to the due performance of his official service: especially if at his hands no communication is likely to be made to any person, who is likely to employ it in giving rise or existence to the evil apprehended.

Rule 4. But, as every addition made to the number of the persons possessed of the information, adds to the probability of promiscuous or otherwise mischievous communication,—by no person should the communication be suffered to be received, other than him or them, in whose instance the receipt of it is necessary to the due performance of the services in question, as above.

Instructional.

Art. 15. Limitation as to *time*.

Certain Sub-departments there are, in which the nature of the business seems scarcely to admit of any limitation to the time during which the good of the service may require the secrecy to be observed. These are—1. The Defensive Force Sub-department: 2. The Foreign Relation Sub-department. In these instances, for preventing the concealment from being continued longer than the good of the

service requires, two arrangements present themselves.

I. Let it be part of the business of the *Prime Minister* from time to time—say at the beginning of each year,—to make a *Report* to the Legislature, stating the instances in which, in these several Sub-departments, the demand for secrecy has, in his opinion, ceased, that divulgation may be made accordingly.

Instructional.

Art. 16. II. In like manner, and on the same principle, let the Legislature annually appoint a *Committee* for the same purpose: that its *Report* may serve as a check to the Prime Minister's Report: for which purpose, it should make known all instances, if any, in which continuance is given by him to any concealment, which, in their opinion, is not necessary.

Instructional.

Art. 17. On both occasions,—instead of, or along with, the instances, in which the concealment requires to be *continued*, the *Report* may have for its subject-matter, those in which it may, without prejudice to the service, be *discontinued*, and divulgation substituted. In every instance in which such *continuance* is recommended, such mode of *designation* will, of course, be employed, as shall suffice for preventing all such disclosure as is not intended.

Instructional.

Art. 18. Note, that the greater the proportion of new members is in each successive Legislature, the less the probability is, that concealment will be continued beyond the duration of the exigency.

Section XII.

Securities for appropriate aptitude.

Art. 1. For maximization of appropriate aptitude on the part of the Prime Minister, securities here provided are as follows:

1. The *Registration* system, as per Section 10; whereby, as in the case of the Members of the Legislature, his several official acts, including all those of his subordinates, which, by his authorization or acquiescence, are rendered his—are, at the pleasure of his superordinates: to wit, the *Legislative* authority, and the *Constitutive*,—submitted to their cognizance.

2. The *Publication* system, as per Section 11; whereby, with no exceptions,—other than those respectively made, by the consideration of the *expense*, and by the demand presented by *special cause* for *temporary secrecy*,—those same acts will be promptly, regularly, constantly, and effectually, presented to the cognizance of those same superordinate authorities.

3. *Dislocability* by the *Legislature* as per Section 9, Art. 1.

4. *Dislocability* by the *Constitutive* authority, as per Section 9, Art. 2.

5. *Responsibility*, for insufficiency in the exercise of his several functions, *informative*, *indicative*, and *initiative*, as per Section 3, *Relation to Legislature*.

6. *Dislocability*, by *acceptance* or *retention*, of any other *office* belonging to the Official Establishment of this State: as in the case of a Member of the Legislature, as per Ch. vi. Section 31, *Securities*, Art. 13.

7. So, by acceptance or retention, of any *office*, *gift*, or *factitious honour or dignity*, at the hands of any foreign government, as in that same case, as per Ch. vi. Section 31, Art. 14, 15, or at the hands of any individual foreigner, for favour received of the Prime Minister, or expected to be done by him, in the exercise of any function belonging to his office.

8. Obligation to keep in exercise a *Depute* or Deputes; coupled with responsibility for their aptitude, as per Section 4, *Self-suppletive function*.

9. *Responsibility*, for the aptitude of his immediate *subordinates*, as per Art. 2, 3, 4, here ensuing.

10. *Securities* applying to the several situations of these his *subordinates* and instruments, as per Ch. ix. Ministers collectively. Section 25, *Securities*.

11. In particular, checks to arbitrariness, in his choice of subordinates,—by means of the evidence of appropriate aptitude necessitated on the part of all persons locable in the Administrative Department, as per Ch. ix. Ministers collectively, Section 16, *Locable who*, and the pecuniary competition, necessitated as per Section 17, *Located how*.

12. Functions, *statistic*, *censorial*, and *melioration-suggestive*, exerciseable by all persons, as Members of the *Public Opinion Tribunal*, in relation to his situation and his conduct therein, as in the case of the Legislature and its Members, as per Ch. v. Constitutive, Section 5, *Function of the Public-Opinion Tribunal*.

13. Dislocability and responsibility, punitional and compensational, for criminal delinquency, as in the case of a Member of the Legislature, as per Ch. vi. Section 28, *Legislation Penal Judicatory*.

Enactive.

Art. 2. If, from any person, offering adequate security for eventual responsibility, information has, publicly or privately, been received by him, of indication of misconduct, or inaptitude, in any shape, on the part of any Minister, as manifested by any individual occurrence,—to the Prime Minister it thereupon belongs, forthwith to take remedial measures, by inquiry instituted.

Enactive. Ratiocinative.

Art. 3. At the requisition of any such indicator, his name and personality may be, and

at his desire ought to be, provisionally kept secret: subject nevertheless to disclosure, for the purpose of judicial pursuit or public exposure, in case of mendacity, insincerity, or falsehood accompanied with temerity, in respect of the indication so afforded.

Enactive. Ratiocinative.

ART. 4. To the case of all existing Ministers located by any predecessor of his, this responsibility of the Prime Minister extends, as well as to the case of those located by himself: if originally unapt, the functionary ought not to have been located: if become unapt, he ought not to have been continued.

Enactive.

ART. 5. To the Prime Minister accordingly with relation to those his immediate subordinates, apply the several securities established in those instances in relation to the several subordinates: as per Ch. ix. MINISTERS COLLECTIVELY. Section 25, *Securities. &c.* Art. 13, 14, 15, 16.

CHAPTER IX.

MINISTERS COLLECTIVELY.

SECTION I.

Ends in View.

Instructional.

ART. 1. ENDS IN VIEW—as in every other Department of the Official Establishment, so in this, are—1, maximization of appropriate good: 2, minimization of correspondent evil. Under these two heads may, on this occasion, be comprised the two all-comprehensive branches of the main universal end—the greatest happiness of the greatest number.

Expositive.

ART. 2. By *the appropriate good*, understand, on this occasion, the due and successful performance of the several operations, by the performance of which the functions belonging to the several functionaries employed in the Administration Department are exercised, and the business of their several offices carried on: by *the correspondent evil*, evil in its several shapes—to wit, delay, vexation, and expense to functionaries and *suitors:* main end, maximization of the good: collateral end or ends, minimization of the evil.*

Instructional.

ART. 3. In these may be beheld two landmarks, set up for the guidance of the legislator in his course. The collateral end, considered in these its several branches, has the more need to be here noted, the more apt it is to be overlooked: in particular, so far as regards *suitors.* See this distinction farther developed in Section 7, *Statistic function.*

Expositive.

ART. 4. By a *suitor*, as in the case of the Judiciary Department, (as per Ch. xii. JUDICIARY COLLECTIVELY,) so in this, understand any person considered as having business to transact with any functionary belonging to this Department, and acting or applied to in such his capacity.

For the arrangements having more particularly in view this same collateral end, see Section 21, *Oppression obviated*, and Section 25, *Securities, &c.*

SECTION II.

Ministers and Sub-departments.

Enactive.

ART. 1. Under the Prime Minister are the Ministers following: namely,

1. The Election Minister; as to whose functions, see Section 4, *Functions in all*, and Ch. xi. Section 1.
2. The Legislation Minister; as to whose functions, see Section 4, and Ch. xi. Section 2.
3. The Army Minister; as to whose functions, see Section 4, and Ch. xi. Section 3.
4. The Navy Minister; as to whose functions, see Section 4, and Ch. xi. Section 4.
5. The Preventive Service Minister; as to whose functions, for the prevention of delinquency and calamity, see Section 4, and Ch. xi. Section 5.
6. The Interior Communication Minister; as to whose functions, see Section 4, and Ch. xi. Section 6.
7. The Indigence Relief Minister; as to whose functions, see Section 4, and Ch. xi. Section 7.
8. The Education Minister; as to whose functions, see Section 4, and Ch. xi. Section 8.
9. The Domain Minister; as to whose functions, see Section 4, and Ch. xi. Section 9.

* In the case of the logical division thus made, the *condivident parts*, (it may perhaps be observed,) in some places, contrary to rule, run one into another: *good*, meaning pleasure or exemption from pain, or an efficient cause of the one or the other: *evil*, pain, or loss of pleasure, or an efficient cause, as above. But, as language has been framed, the entanglement, such as it is, was unavoidable; and, at any rate, in the first-mentioned of these ends, the *good* will be seen to be most *pre-eminent;* in the last-mentioned, the *evil.*

Of the matter of good, the component elementary parts, or say *species*, are frequently styled *benefits;* of the matter of evil, *burthens:* two corresponding and as it were correlative denominations, for the employment of which the demand will, under every system of law, be of continual occurrence.

By a *benefit*, is meant a portion of the matter of *good;*—by a *burthen*, a portion of the matter of *evil:*—considered as experienced by some person from the operation of some particular cause.

10. The Health Minister; as to whose functions, see Section 4, and Ch. xi. Section 10.

11. The Foreign Relation Minister; as to whose functions, see Section 4, and Ch. xi. Section 10.

12. The Trade Minister; as to whose functions, see Section 4, and Ch. xi. Section 12.

13. The Finance Minister; as to whose functions, see Section 4, and Ch. xi. Section 13.

Enactive.

Art. 2. To each Minister belongs a Sub-department of the corresponding denomination; but, under the authority of one and the same Minister there may, upon occasion, be any number of these same Sub-departments.

Expositive.

Art. 3. Collectively taken, the functionaries, who, under the Prime Minister, are respectively at the head of these Sub-departments, are denominated *Ministers:* severally, they are denominated from the names of the respective Sub-departments: as thus—*Election Minister, Legislation Minister,* and so on.

Expositive.

Art. 4. But though of each Minister the *logical field of service* is styled *a Sub-department,* his official name is—not *Sub-minister,* but simply *Minister.*

Expositive.

Art. 5. Accordingly, as often as, in this Code, the word *Ministers* occurs, understand by that denomination—not the *Prime Minister,* but only these same Ministers.

Enactive. Expositive.

Art. 6. *Sub-minister* is the official name, of a functionary who, to a Sub-legislature, bears the same relation as the above-mentioned Ministers bear to the Legislature.

Enactive. Expositive.

Art. 7. In like manner, *Sub-Prime Minister* is the official name of the functionary, who, to a Sub-legislature, bears the same relation as the Prime Minister bears to the Legislature.

Enactive. Instructional.

Art. 8. At the commencement of the authority of this Code, and so on during the preparation period, as per Section 16, *Locable who,* the Prime Minister, under the direction of the Legislature, will allot to each Minister one or more of the above-mentioned Sub-departments. On this occasion, he will have regard—on the one hand, to the avoidance of the *waste* and *corruption* produced by the paying of *divers* functionaries where *one* would suffice,—on the other, to the quantity of *time* requisite for the conduct of the several businesses, and the faculty of finding individuals, in whose instance the several branches of appropriate aptitude, with relation to the respective businesses, will be found united.

Enactive. Ratiocinative.

Art. 9. Where two or more Sub-departments have been allotted to one and the same Minister, it belongs not to the Prime Minister, without the concurrence of the Legislature, so to separate them as to add to the number of the Ministers; for, by so doing, scarcely could he avoid giving increase to the expense; and thus, whether to or for his own benefit or not, imposing upon the people a correspondent tax.

Expositive. Instructional.

Art. 10. Examples of unions, which, antecedently to experience, seem most likely to be effectible without detriment to the service, are the following:

I. The Army, Navy, and Preventive Service Sub-departments.*

II. The Interior-communication and Domain Sub-departments.

III. The Indigence Relief and Education Sub-departments.

IV. The Trade and Finance Sub-departments.

Section III.

Number in an Office.

Enactive.

Art. 1. In each official situation, functionaries no more than one.

Ratiocinative.

Art. 2. Short reason, here as elsewhere, *official aptitude maximized; expense minimized.* Reasons in detail, the following—See, moreover, Section 15, *Remuneration;* Section 16, *Locable who;* Section 17, *Located how.*

Ratiocinative.

Art. 3. I. Appropriate moral aptitude.

I. The state of the law being given,—for every practical purpose, appropriate *moral* aptitude must be considered as exactly proportioned to the strictness of the functionary's dependence on *public opinion:* understand thereby the general tenor of the exercise given by the Public-Opinion Tribunal to its power: exception made of any such aberrations from the path marked out by the greatest happiness principle, as, on the part of that body, happens, in the place and at the time in question, to have been produced and maintained, by deficiency in appropriate *intellectual* aptitude.

II. Singly-seated, a functionary finds not any person on whom he can shift off the whole or any part of the imputation, of a mischievous exercise given to any of his functions. Not so, when he has a colleague.

* In the Army and Navy Sub-departments, Courts Martial belong, in one point of view to the Judiciary Establishment.

III. No person does he find to share with him in the *weight* of that odium.

IV. No person does he find in the same situation with himself, engaged by the conjunct ties of self-regarding interest and sympathy, to support him under the apprehension of it, by the encouragement given by their countenance.

V. He has it not in his power, without committing himself, to give to an indefensible exercise made of his functions, half the effect of a vote,—namely, by purposed absentation and non-participation.

VI. He finds not, in the same situation with himself, any person to share with him, and in proportion draw off from him, the whole, or any part, of any lot of approbation, whether on the part of his superiors in office, or the public at large, that may come to be attached to extra merit, in any shape, manifested on the occasion of any exercise given to his functions.

VII. His reputation stands altogether upon the ground of his actions. He finds not in the same situation, any person to help him, as numbers help one another, to raise a schism in the public,—and, by the mere force of prejudice,—without evidence, or in spite of evidence, in relation to specific actions,—to draw after them the suffrages of the unreflecting part of it.

Ratiocinative.

ART. 4. II. APPROPRIATE INTELLECTUAL APTITUDE, cognitional and judicial.

VIII. By a single seated functionary, intellectual aptitude is likely, from the above-mentioned causes, to be acquired and maintained in a higher degree than by a conjunctly seated functionary, in so far as aptitude in this shape is the fruit of *exertion*.

Ratiocinative.

ART. 5. III. APPROPRIATE ACTIVE APTITUDE.

IX. On the part of a singly-seated functionary, appropriate active aptitude is likely to be acquired and maintained, in a higher degree than by a conjunctly seated functionary, in so far as aptitude in this shape depends upon the joint power of intellectual aptitude and exertion.

Ratiocinative. Expositive.

ART. 6. IV. COLLATERAL END OR ENDS OF ADMINISTRATION: exclusion of *delay, vexation,* and *expense*.

X. Only in the case of a singly-seated functionary can *promptitude*, or say *despatch*, be maximized.

XI. A singly-seated functionary has but one opinion, and one set of reasons, to give.

XII. No person's opinion has he to wait for.

XIII. No person has he to debate with, to gain over, or to quarrel with.

XIV. No person has he to put unnecessary questions to him,—to propose unnecessary steps,—or to necessitate useless adjournments.

XV. To *suitors*—that is to say, to persons having business at the office,—causes of *delay* are, in a large proportion of the number of individual cases, to a greater or lesser amount, causes of *expense*.

Ratiocinative.

ART. 7. The addition made, as above, to the above-mentioned evils by plurality, bears a pretty exact proportion to the *number* of the seats.

Ratiocinative.

ART. 8. So many seats, so many sets are there of persons, who, by community of sinister interest, stand engaged to secure the possessor of the situation against responsibility in every shape, for delinquency in every shape.

Ratiocinative. Expositive.

ART. 9. In each set of persons thus linked together by a community of sinister interest, distinguishable component members are the following—

I. All persons, connected by any tie of self-regarding interest or sympathy, with any of the several *actual* incumbents.

II. All persons having any prospect of *succeeding* to those same situations.

III. All persons, connected, as above, with any such successor in expectancy

Ratiocinative.

ART. 10. The *higher* the situation in the scale of power, the stronger of course the support given to delinquency, by addition of sets of persons, united, as above, in support of it.

Expositive.

ART. 11. In English practice, where, in the Administration Department, in an official situation, Members, more than two, have place, the aggregate of them is commonly styled *a Board*.

Ratiocinative.

ART. 12. A Board keeps concealed deficiency, in any amount that can be desired, in appropriate intellectual aptitude in both its shapes,—with the addition of that of appropriate active aptitude.

Ratiocinative. Instructional.

ART. 13. A Board furnishes means and pretext, for bestowing, to the largest amounts in use, the matter of remuneration, on a number of persons equal to that of all its members except one—all of them in any degree destitute of appropriate aptitude in any or every one of its shapes.

Ratiocinative.

ART. 14. By vacancy or temporary incapacity, if effectual provision against it were not made, a considerable objection to single-seatedness would indeed be afforded. But by section 6, *Self-suppletive function*, such provision *is* made; and in that way, without expense: instead of being made, as above, with increase-

of expense in exact proportion to the additional number of seats.

Ratiocinative.

Art. 15. Whatsoever beneficial effects can be expected from a multiplicity of functionaries in the same situation, may, and in a much greater degree, be insured, and in this Code are accordingly insured, by means of other agents: namely, by superordinates, (the Public-Opinion Tribunal included) for control; by Subordinates, for information.

Exemplificational. Instructional.

Art. 16. In the Central Government of the Anglo-American United States, the situations in the Executive Department are every one of them single seated. Of the thirteen here proposed Sub-departments, some have there no place; the rest are consolidated into four: each filled by a Minister, locable and dislocable by the President of the State, whose power, in so far, is that of the here proposed Prime Minister. Denominations of these Ministers, in the case of the Army Sub-department, Foreign Relation Sub-department, and Finance Sub-department, *Secretary;* in the case of the Navy Sub-department, *Commissioner*. Denomination of the Foreign Relation Minister, *Secretary of State*, to whose office some other functions of a miscellaneous nature may perhaps also be found attached. Sub-departments, conjointly in the hands of the functionary *here* named *Finance Minister*, *there* Secretary of the *Treasury* Department,—those *here* denominated the *Finance Sub-department* and the *Trade Sub-department*. Sub-departments, for which, as not belonging to the logical field of service of the Central Government, *there* is no place, these which follow:—I. The Election Sub-department; II. The Preventive Service Sub-department; III. The Interior Communication Sub-department; IV. The Indigence Relief Sub-department; V. The Education Sub-department; VI. The Domain Sub-department; VII. The Health Sub-department.—Sub-department, not in the contemplation of that Government, the here proposed *Legislation Sub-department*.

Instructional. Exemplificational.

Art. 17. In the case of the relation between the President, as above, and his immediate subordinates,—the power of the superordinate, in relation to subordinates, is not only as to location, but as to dislocation, absolute: and, at the accession of each President, the power of dislocation is commonly exercised as to those whom he finds in office, and that of location at the same time, as to new ones: in regard to each, effectual responsibility is secured, by the power expressly given to him to require of each of them an opinion in writing, in relation to all points belonging to their respective offices: and, by this arrangement are produced all the good effects, the production of which is professed to be expected from Boards. To this power, the exercise thus given is as a matter of course; and, accordingly, does not to the eye of the public at large convey any unfavourable imputation; nor in the breasts of the functionaries thus eliminated, produce any pain of disappointment.

Instructional.

Art. 18. In this proposed Code, to both powers—that of location and that of dislocation—those limitations are attached which will be seen,—to the power of location, in section 16, *Locable who*, and section 17, *Located how;* to the power of dislocation, in section 21, *Oppression obviated*. Thus, then, a sort of competition for the preference may be seen having place. In the case of this Code, in regard to *location*, the limitations to the power of effecting it in the instance of these situations, form part of an all-comprehensive system, and are necessary to the exclusion of inaptitude: as to *dislocation*, the one arrangement may be best in some countries, the other in others.

Ratiocinative.

Art. 19. Any beneficial effects, that can by accident have resulted from any addition to number *one*, will not be found attributable to anything but the chance it affords of an appeal, formal or virtual, to superordinate authority, as just mentioned.

Ratiocinative.

Art. 20. That which, in the exercise of official functions, constitutes *arbitrary power*, is—not the unity of the functionary, but his exemption from control, including the obligation, contemporary or eventual, of assigning *reasons* for his acts.

Ratiocinative.

Art. 21. The circumstances which render plurality indispensable in *legislation* apply not to the case of *administration*. For the purpose of legislation, it is not physically possible for the Supreme Authority—the Constitutive—to act, in one body and in concert and co-operation, in the location and dislocation, periodical and eventual, of an immediate subordinate: nor, in this way, were it physically possible so to act would it be possible so to act with advantage towards the proper ends of government: but, to its locators and representatives in the Legislature, this conjunctness of action is possible, and is accordingly here ordained.

Exemplificational. Ratiocinative.

Art. 22. In English practice, this Department swarms with Boards. And this practice—does it not (it may be asked) form a presumption in favour of many-seatedness? *Answer.* A presumption: yes. But, of this presumption the probative force is completely overborne: overborne—by that of the above

reasons, with the addition of the counter presumption afforded by the counter practice of the United States, as per Art. 16, with or without the consideration of the *ends* to which the many-seatedness has been directed, and the *purposes* which have accordingly been, and continue to be, served by it.

Exemplificational. Ratiocinative.

Art. 23. End in view of the here proposed Code, the greatest happiness of the greatest number: *means*, or say *subend*, so far as regards the whole Official Establishment, maximization of official appropriate aptitude, coupled with minimization of expense: for the connexion between which two branches, see Section 15, *Remuneration;* Section 16, *Locable who;* Section 17, *Located how.* End in view in the case of the English form of government, greatest happiness of the *ruling one*, in conjunction with that of the *subruling few: means* and *subends*, on the part of the whole Official Establishment, in relation to appropriate aptitude, minimization of the quantity necessary to the possession of a situation in it; in relation to expense, maximization,—for the sake of the profit, to the *one* and the *few*, extractible out of the expense. Of the truth of the position, that the here assigned main end and subends are the real ones,—the above-mentioned ratiocinative matter, as far as it goes, operates in demonstration: for further proof, see whatsoever, in the course of this Code, is said of that same form of government, and in particular in the several sections just referred to.

Exemplificational. Ratiocinative.

Art. 24. In practice, in some of the above instances, partition of the business would probably be found to have place: and, in the course of this partition, more or less of the business would be found lodged in single hands. But, by no such instances of single-seatedness are the mischievous effects of many-seatedness, as above particularized, diminished: on the contrary, rather are they increased. General result, a mixture of responsibility and irresponsibility, both contributing to misrule: on the part of all subordinate Boards, responsibility —and that complete—as towards the Cabinet Ministers, who are in the same way responsible (dislocationally, to wit,) to the completely irresponsible and thence arbitrarily ruling Monarch; irresponsibility, as towards the Public-opinion Tribunal, exemption from its influence being in so great a degree the result of the many-seatedness, as above.

Exemplificational. Ratiocinative. Instructional.

Art. 25. For many-seatedness, in no one of all these several instances, can there be any necessity or use. So far as single-seatedness, as above, has place,—for producing its good effects, it has but to be rendered, as here, permanent, and at the same time notorious: so many exemplifications of it, so many distinct official situations being established, each with its appropriate denomination. To the Public-opinion Tribunal, each functionary would then be responsible for *every*thing that he does: on the present footing, no one is responsible for *any*thing that he does.

Instructional.

Art. 26. Rule. Be the situation what it may,—if there be more business than a single functionary is sufficient for,—according to the nature of the business, keep for the principal member a certain portion of it, establishing additional single-seated situations, one or more, either in co-ordination or in subordination, with reference to the original one. The distribution, the declared existence of which forms the only alleged reason in support of the Board system, will thus be to a certainty effected: whereas, otherwise, it may be pretended to be effected, without being so in reality.

Ratiocinative. Instructional.

Art. 27. In the case of the English Boards, what there is of irresponsibility, as above,—though in every instance it keeps the Members in a great degree exempt from the authority of the Public-Opinion Tribunal, and in that same degree deprives the public of that security for appropriate aptitude and good conduct,—does not exempt them in any degree from the absolute and arbitrary power of the Monarch. In the Chief of each Board, under whatever name, he beholds the sole and all-sufficient instrument of his will; and, for the purpose of giving effect to it by the direction given to the proceedings of the Board, the object of his confidence. By him, every Member of every Board may at any time be dislocated at pleasure: all but the Chief, in case of non-compliance with the direction of the Chief: the Chief, in case of non-compliance with the direction of the Supreme Board, the Cabinet, the Members of which are, every one of them, at every instant dislocable by that same universal Master;* and, for this purpose, though to the public nothing is on any occasion known of the part taken by *any* one of them, —yet by him, through the medium of the Chief, everything is known of the part taken by *every* one of them. Under this form of government,—a Board, though in so great a degree unapt as a security for good rule, is, as may be seen, completely apt as a security for misrule. What then is it that prevents the despotism from being in that one hand consummate? The answer belongs not to this place. See as to this matter, Ch. xvi. Quasi Jury.

* Of the Members of this Supreme Board, the number has within these forty-four years received an augmentation, to the amount of what may be stated as one half. At present, it is fourteen. In the year 1782, what is certain is—that it was not more than ten: what seems highly probable is—

Instructional. Ratiocinative.

Art. 28. Correspondent and opposite to the case of the union of divers persons in one official situation, is that of the union of divers official situations in one person. Cases in which a demand for this union may have place are the following—

Case I. For the business of the several situations, the applicable time of one individual sufficient. Of causes of demand in this case, examples are—

1. On the part of all,—need of the service of one and the *same subordinate* or set of subordinates, at the same time.

2. Saving of the *time* necessary for *conveyance* of appropriate information from one to another, in so far as information, necessary to all, is, in the first instance, received by any number less than all.

3. Saving of *expense:* more particularly expense in remuneration.

For eventual instances of all these causes of demand, see Section 2, *Ministers and Subdepartments.*

Instructional.

Art. 29. Case II. By reason of the smallness of the local field of service and the logical field taken together,—unfrequency of the individual instances of demand, for the exercise of the functions belonging to the several situations.

For examples, see Ch. xxv. *Local Headman;* Ch. xxvi. *Local Registrar.* In the situation of *Local Headman*, number of functions belonging to the Administrational Department, eleven; to the Judicial Department, five; total, sixteen: many of them widely dissimilar.

Ratiocinative. Instructional.

Art. 30. Thus it is—that, at the top and at the bottom of the official climax, the greatest scope for the union of functions of different natures has place: at the top, because there the functions are chiefly of the *directive* kind; and to the directive function, exercise may, in minute portions of time, be given to the operations of functionaries, in indefinite number: at the bottom, because, for the performance of the functions, though of the executive kind, the demand for performance will generally be so unfrequent.

Instructional.

Art. 31. At the first formation of the official establishment, on no other ground than that of conjecture can any determination be formed, as to the number of distinguishable sets of functions, to which the service of one and the same individual will be sufficient to give exercise. Thereafter, a more substantial and appropriate ground will be afforded, by experience, observation, and experiment. But, in the nature of the case, at one time the demand for augmentation, at another time the demand for diminution, will be presented by incidental occurrences.

Suppose the maximum of frugality attained in the first instance, yet thereafter increase of

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that it was not more than nine.* Of this change, the causes, could they be ascertained, would be instructive: the consequences may be in no small degree influential, if so it be that by the same causes, a gradual further increase to an indefinite extent, is a probable result. But, any endeavour to reach them, would require a dissertation which belongs not to the present subject.

Note, in the several Boards following, number of Members as follows—

I. HIGHEST BOARD.

1. Cabinet Ministers.....14

II. SUB-BOARDS.

1. Treasury Board..... 7
†† 2. Exchequer Bill Loan Office.....29
† 3. Board of Trade.....21
4. Admiralty Board..... 5
† 5. India Board.....12

III. *Bis-sub-boards under the Treasury Board.*

1. Customs Board.....13
2. Excise Board.....13
3. Stamp Office..... 7
4. Tax Office..... 5
5. Hackney Coach Office..... 4
6. Woods and Forests Board..... 3
†† 7. Consolidated Army Clothing Board.....52

IV. *Bis-sub-boards under the Admiralty Board.*

1. Navy Board..... 9
2. Victualling Board..... 7

Number of these Boards..... 15
Total number of Members of these Boards.....208
Average number of Members in a Board..... 13

Note—that, to the purpose of *diminution of responsibility*, the whole number applies in every one of the above instances. Not altogether so to the purpose of *increase of expense.* In the case of those marked with two crosses, no one of the Members has any emolument in quality of Member of the Board: in the case of those marked with *one* cross, only some small number, such as two or three. But, in every one of these Boards, subordinates there are in single-seated situations, who, all of them have salaries.

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* Ground of this persuasion. Anno 1782, the Earl of Shelburne became Prime Minister. On that occasion, *eleven*, the Author of these pages perfectly remembers spoken of with much warmth by a friend of his—a Member of the opposite party—as being the result of an addition, by which the number of the Members was swelled to an altogether astonishing, as well as unexampled magnitude.

In that Supreme Administration Board, there were at that time, three grades of power, distinguished by appropriate denominations: the *Cabinet* simply; the Cabinet with the *circulation;* and the Cabinet with the circulation and the *Post Office.* By the *circulation*, was meant the privilege of a key to the box, in which the foreign despatches, with or without other documents of the day, went its rounds: by the *Post Office*, the power of ordering the letters of individuals to be opened at the Post Office. Such is the information given by that Minister to the Author of these pages, when present at the opening of one of these receptacles, and reading of the contents. How the matter stands at present, he cannot say.

population, whether in the whole territory of the State, or only in this or that section of it, will naturally become productive of a demand for augmentation in the number of official situations,—and this, without any infringement of the *expense-minimization* rule.

Exemplificational. Instructional.

ART. 32. In English practice, in regard to the number of official situations, the same Official Establishment exhibits, in one department —the Administrational—a vast redundancy;—in another department—the Judiciary—a vast deficiency. Of two systems in appearance so inconsistent, a common efficient cause may be seen in the all-ruling sinister interest. In the Administrational Department, all functionaries being, in every situation, in effect, dislocable, as well as locable, at the command of the supreme authority,—and at the same time endowed with emolument, mostly in vast excess,—the greater the aggregate mass in number and value, in the greater degree is the sinister interest on the part of locating rulers, benefited: and note, that in this Department, the emolument is in general composed exclusively of salary without fees; and is thence not increasible by any act on the part of incumbents.—In the Judiciary Department, on the contrary,—the emolument being increasible and increased, by fees exacted by locators for themselves and their locatees,—the greater the number of judicatories of subordinate grades, the incumbents of which would not be locable by them, the greater would be the quantity of business intercepted, and prevented from finding its way to their shops. Hence a compound, composed of *sale* of what is called *justice*, and *denial* of it; denial, to wit, to all those who cannot afford to buy it: and by both sale and denial, the sinister interest benefited: shape of the benefit, in so far as the *sale* has place, *emolument*—in so far as *denial*, ease.

Instructional.

ART. 33. A memento for which, on this occasion, a demand might seem to have place,—is a caution not to unite, in the hands of one and the same person, two or more offices, termed, for shortness, *incompatible:* an appellation by which have been designated offices, the possessor of one of which is in any way subordinate, or in any way immediately responsible, to the possessor of the other. *Reason*, the control would, by any such arrangement, be annihilated. But, an arrangement thus palpably absurd—scarcely could it be realized but in a more or less disguised form: as where the two official situations are, one or both of them, many-seated: and in the present Code have been inserted, even without any design directed to this end, two arrangements, either of which would, so long as it lasted, suffice to exclude all demand for any such caution. One is—the non-existence of any many-seated official situation under that of the Legislature: the other —the dislocability, of the possessor of every official situation under the Legislature, by any one of several authorities.

Instructional.

ART. 34. More obviously to the Judiciary Department than to the Administrational belongs the caution here given: and but for English practice, scarcely could there have been any demand for it. Under this form of government, an all-ruling, although, (as may be imagined,) not a declared principle is—what may be termed the *self-judication principle:—Every man judge over himself.* Examples follow.

Exemplificational.

ART. 35. I. In case of breach of official duty, from the lowest to the highest degree of enormity, in the highest situations—the *Cabinet*, for example,—no penal Judicatory but the House of Lords, no accuser but the House of Commons: and, of the Cabinet, every Member is so either of the House of Lords, or of the House of Commons.

Exemplificational.

ART 36. II. Anno 1826. In the House of Commons, complaints after complaints, during a long course of years, (grounds of complaint having existed during a much longer,) of inaptitude, intellectual and active, on the part of the head of the law: complaints of moral inaptitude,—(conniving at, and profiting by, extortion practised to vast amount, on false pretences,) though so much more flagrant as well as notorious, being, as usual, studiously suppressed. To stop the inquiry in the House of Commons, a fellow Member of the Cabinet proposes a Board of Commissioners to be named for inquiry into the aptitude of the system of procedure, under which the Judge in question is acting: the proposal, acquiesced in of course. Locator of these Judges—in name the King; in *effect*—sole Locator—and by his countersignature, even *in name*,—the Judge so complained of.

Connected with this principle, and constituting a ground for it, is an article in the political creed, not the less universally professed by not being subscribed to, in the political creed:—impeccability of all persons whose situations in the official establishment are of a certain altitude. Exemplifications and proofs might fill a volume: for, by these principles, is practice—throughout—and in particular judicial practice, as well as language, determined.

SECTION IV.

Functions in all.

Instructional. Expositive.

ART. 1. To the several sorts of *operations*, which in every one of these Sub-departments will need to be continually *performed*, correspond so many *functions* which will need to be

exercised. By the name of the function, the name as well as nature of the operation will in general, with the help of a short definition or exposition, where necessary, be sufficiently indicated: where not, it will be added.

Instructional. Expositive.

Art. 2. Previously to the enumeration of these functions, note requires to be taken, of the distinctions, which have place, in regard to the sorts of *subject-matters*, on or in relation to which these same functions, and in particular the *registrative*, as per Section 7, will have to be exercised.

Expositive.

Art. 3. Only by their *names* or more ample descriptions, can the subject-matters of political functions be designated. All names are, in their grammatical appellation, *nouns-substantive*.

Expositive.

Art. 4. I. Names of *real* entities—names of *fictitious* entities:—under one or other of these denominations will all names of the subject-matters in question be found comprised.*

Expositive.

Art. 5. Names of *persons*—names of *things*:—under one or other of these denominations will all names of real entities be found comprised.

Expositive.

Art. 6. Names of fictitious persons—names of fictitious things—under one or other of these denominations, will all names of fictitious entities be found comprised.

Expositive.

Art. 7. II. On one class of *fictitious entities* is by lawyers bestowed the denomination of *things incorporeal*. These are *obligations* and *rights*: of which two correspondent fictitious entities, *rights* alone are commonly spoken of, though they are not explainable or intelligible otherwise than by reference to the respectively correspondent obligations; while obligations are capable of having place without any correspondent right.

Expositive.

Art. 8. By the *absence* of correspondent *obligation*, *right* is in some instance constituted: by the *presence* of obligation, in other instances: by the absence of obligation in one quarter, coupled with the presence of it in another, in another set of instances.

Expositive.

Art. 9. By the absence of obligation to forbear meddling with it, is constituted your *simple*, or say *natural* or *natred* right to anything that is yours: by the obligation imposed on your neighbour to forbear meddling with it, and to forbear obstructing you in the use of it, is constituted whatever factitious, or say *sanctional* and *exclusive* right you have to it.†

For further exemplifications, see the Penal and Procedure Codes.

Expositive.

Art. 10. III. *Immoveables* and *moveables*—to one or other of these denominations will everything that is not a fictitious entity be found referrible. Clear and eminently useful is this distinction: source of it, *Rome-bred* law: source of endless confusion, the denominations which come nearest to the above—the denominations—*realty* and *personalty*, in English-bred law.

Expositive.

Art. 11. IV. *Moveables* at large, and *money*: to one or other of these denominations will be found referrible every*thing* that comes under the denomination of *moveables*. What, on the present occasion, renders the division and distinction necessary is—that, between *money* on the one part, and all *other things moveable* on the other, such will be found, in several respects, the diversity,—that although, between the sets of functions respectively exercisible in relation to them, little, if any, difference will be found requisite to be made in *name*, yet, in the effects respectively produced upon the two sorts of subject-matters, by the exercise given to these same functions, great difference will be seen to have place: a difference, which has for its cause the comparative simplicity of the sort of thing denominated *money*, and the *necessary* diversifications which have place in the remaining part of the aggregate, denominated *things moveable*.

Expositive.

Art. 12. V. *Occurrences*—to this denomination will be found referrible all *fictitious entities*, considered as presenting themselves to human notice: that is to say, in each instance, the matter of fact consisting in their so presenting themselves.

Expositive.

Art. 13. VI. *States* (understand *quiescent* States) of *persons* or *things*, and *motions* of the same—to one or other of these denominations will be found referrible every *occurrence* that requires to be taken for the subject of the hereinafter explained registrative function, the exercise of which is composed of that of the hereinafter mentioned *minutative*, and that of the *conservative* function, and, exceptions for special reasons excepted, is followed by that

* For an exposition of the division of names of entities into real and fictitious, see Fragments on Ontology, vol. viii. p. 195, *et seq.*—*Ed.*

† *Moral rights* belong not to this place. A thick cloud envelopes the discourse, under it endless confusion reigns—wherever they are confounded with *legal* rights. [See vol. ii. p. 497, *et seq.*]

of the hereinafter explained *publicative* function.

Expositive.

ART. 14. VII. *Interior* and *exterior*—to one or other of these denominations, or both together, will be found referrible every occurrence, which, to an eye placed in any office belonging to any department of the Official Establishment, can present itself. By *interior*, understand those alone which have taken place in relation to some *person* or *thing belonging* to the department, sub-department, or office in question; by *exterior*, every *other* occurrence and sort of occurrence whatsoever.

Expositive.

ART. 15. VIII. *Important* and *unimportant*—to one or other of these denominations will be found referrible every *occurrence* to which it can happen to be taken for the subject of registration, as above. By *important*, understand of a nature to exercise an influence, augmentative or diminutive, on the net sum of happiness.

Expositive.

ART. 16. IX. *Relevant* and *irrelevant*—understand to the purpose of registration, as respectively applied to the service of the several above-mentioned Sub-departments: and thence (as presumed) to the purpose of exercising an augmentative influence on the net sum of happiness, as above.

Instructional.

ART. 17. Of such occurrences as are *relevant*, an object of endeavour will be, in the business of each Sub-department, to maximize the *number* and *value*, minimizing, at the same time, the number of such as are deemed irrelevant. To the exercise given to the hereinafter mentioned *statistic* and *registrative* functions, this distinction is more particularly applicable.

Expositive.

ART. 18. X. Written (including quasi written) instruments. By written instruments, understand any*things*, immoveable or moveable, which are distinguished from things at large, by being applied to the purpose of giving expression to discourse. *Real*, considered in themselves, they are *personal* when considered in respect of the expression given by them to the thoughts of *persons:* the information conveyed by them having thus the effect of *personal information*, or say *evidence*.

Expositive.

ART. 19. XI. Like the *occurrences*, which they are capable of being employed in giving expression to, those same instruments may be distinguished into *interior* and *exterior*, *important* and *unimportant*, and the important again into *relevant* and *irrelevant:* distinguished in the same manner, and for the same practical purposes.

Expositive.

ART. 20. XII. In so far as applied to the purposes of law and government, they may be distinguished according to the Departments and Sub-departments, to the service of which they are or ought to be respectively applied: and, in each individual case, the person whose discourse they exhibit will be either a *functionary* or a *non-functionary*.

Expositive.

ART. 21. XIII. On the occasion of each such instrument, there will be a person or set of persons, *by* whom the discourse is addressed, and a person or set of persons, *to* whom the discourse is addressed.

Expositive.

ART. 22. The instruments, to which existence is given by an *act* of *registration*—by the exercise of the *registrative* function,—might, to a first glance, present themselves as constituting an exception: but, on further observation, being all of them destined for publication, at a time either certain and immediate, or eventual and more or less distant,—these also will be seen to be addressed *to a set of persons:* to wit, those of whom the *public* at large is composed.

Expositive.

ART. 23. XIV. Considered as addressed, by or from a functionary, in any department of the State, to a functionary subordinate to himself, or to a non-functionary, subject, on the occasion in question, to his authority, an instrument may be termed a *mandate*.

Expositive.

ART. 24. *Transitory* and *naturally permanent:*—considered in respect of possible *duration*, under one or other of these denominations will all *mandates* be found comprised.

Expositive.

ART. 25. By *transitory*, understand those in the case of which, at the end of a certain length of time, by some circumstance or other belonging to the nature of the act, giving *ulterior* execution and effect to the mandate is rendered impossible: as where the mandate having for its sole object the exercise of a certain act, on a certain person or thing, such exercise has been performed, and the object of the mandate accomplished. In this case, the mandate may also be styled *ephemeral*.

Expositive.

ART. 26. By *naturally permanent mandates*, understand those, the execution of which continues possible, and, bating revocation, will continue actual, for an indefinite length of time. Such are those which have for their

respective subject-matters persons or things, or the one *and* the other, taken in *classes*.

Of this kind, for the most part, are those mandates, which, emaning from the Legislative authority, are called *Laws*.

Expositive. Instructional.

Art. 27. Note, however, that, in case of necessity, there is nothing to hinder the Legislature from issuing mandates, as above, of the ephemeral kind, as well as those of the naturally permanent kind. "*Bring hither forthwith this or that person, or this or that thing.*" Of this transitory and ephemeral complexion will, generally speaking, be those mandates, for example, by the issuing of which, exercise is given to the characteristic function of the *Legislative Inquiry Judicatory*, as per Ch. vi. Section 27. So again, "Convey to this or that *prison*, and cause to be enclosed, and till further orders kept therein, this or that *person*."

Expositive. Instructional.

Art. 28. But, in the ordinary course of things, the situation of the person, by whom utterance is given to a mandate of this ephemeral sort, will be that of some functionary subordinate to the Legislature; say the Prime Minister, say a Minister, especially the Army Minister, the Preventive Service Minister: say lastly a Judge.

Expositive.

Art. 29. *Spontaneous* and *elicited;* considered in respect of its *origin*, under one or other of these denominations will every mandate, in and from whatsoever department issued, be found comprised. By *spontaneous*, understand brought into existence without having been preceded and produced by application, in any shape, from any other quarter; *elicited*, when by such application *ab extra*, brought into existence.

Expositive.

Art. 30. When the mandate, being elicited, has been produced by an instrument, composed of a portion of written discourse, whether ready written, or minuted down as uttered, call the instrument an *application instrument*.

Expositive.

Art. 31. *Ordinance.* This appellative is sometimes employed to designate any *Government mandate* of the *permanent* kind; but is most commonly the result of the exercise of *Legislative* authority either in the supreme or in a subordinate grade. In this case, at any rate if in the supreme authority, it is commonly considered as having for its synonym the word *law*. In the present Pannomion, however, need has been found for making exclusive application of the term *law*, to a purpose in certain respects different: to wit, to the giving clearness to the idea designated by that word, by employing it to designate exclusively a species of *command;* and this, in such sort as on no occasion to designate either more or less than the entire matter of *one command:* whereas, by the term *ordinance* is continually designated matter belonging to distinguishable commands in any number, yet perhaps without embracing completely the whole matter of any *one*. The employment thus given to the appellative *law*, is (in a word) the designation of an abstract idea, having for its object the marking out the distinction between the matter of a *penal* and that of a *non-penal* Code. But, for that detail this is not the proper place.

Expositive.

Art. 32. *Rules, Regulations, Orders.* Without any as yet settled distinction, these words are commonly employed, almost promiscuously, to denote mandates emaning from any constitutional authority subordinate to that of the Legislative,—as also to mandates delivered by bodies incorporated, and bodies or say associations unincorporated, or even by ruling members of private families:—for the designation of a set of mandates belonging to one and the same batch, the word *Rules* being employed sometimes in conjunction with the word *Regulations*, sometimes with the word *Orders*. Thus confused and disorderly is as yet the phraseology of current practice.

Expositive.

Art. 33. By the word *Rule*, a mandate of the permanent kind is more generally presented to view, than a mandate of the ephemeral and transitory kind. But, in the confused language of English procedure, it is equally and indiscriminately applied to both. When employed to designate mandates of the permanent kind, the word *order* is spliced on to it.

Expositive. Instructional.

Art. 34. The distinction is not a mere speculative one. In those established seats and sources of extortion and oppression, in which what is called *justice* is sold to the relatively opulent few, and denied to the relatively indigent many,—no rule, at the instance of an individual, is ever issued *gratis:* none but on payment of a price put upon it, which price is called a *fee*, and pocketed either by a Judge, or by some subordinate *locatee* of his, whose profit is at the same time the profit of the Judge: *elicited*, accordingly on the part of the Judge, not *spontaneously issued*, is the *mandate* or other instrument in this case.

Expositive.

Art. 35. *Rules and Orders* on the other hand are issued—not at the instance of any party to any suit, but *spontaneously* by the Judges themselves, in whom the power of imposing, without stint, for their own benefit, taxes on all suitors, has lately been conferred

by the self-constituted representatives of the people:—trustees who, on that same occasion, thus officiated in such numbers in the two self conjoined characters of oppressors and depredators. Nevertheless, intimate in this case is the connexion between the *permanent* sort of mandate and the *ephemeral*. *Rules and Orders* are the remote and original instruments of the abuse, *Rules*, the immediate and derivative.

Expositive.

ART. 36. *Mandate*, (it may be observed,) being a word not belonging to the vocabulary of English procedure,—it has, on the present occasion, been taken from the body of the language, for the purpose of infusing, if possible, a ray or two of light into the den of Cacus. On a particular occasion—and *that* rather a narrow one—a *Rule* issuing from a Common Law Judicatory, is indeed called a *mandamus:* but, neither on that occasion nor any other is any employment given to the word *mandate*. When issued under the notion of giving termination to a suit,—a mandate receives in one sort of Judicatory, the name of a *judgment*, in another, that of a *decree:* in any other stage of the cause, a *writ*, an *order*, or else a *rule:* in Judicatories of other sorts, it may perhaps be found to go by this or that other name: nor yet without reason: the more various the denomination, the less intelligible.

Instructional.

ART. 37. Of the above explanations it will be seen that some part belongs more particularly to the Judiciary, than to this which is at present on the carpet—the Administration department. But, in this place, the subject being unavoidably begun upon,—in this same place (it was thought) it might with some advantage be concluded.

Instructional.

ART. 38. For giving expression to all these several mandates, together with the *responses*, expressive of the respectively appropriate *answers*, or say, *returns*,—appropriate *written forms* will, in the course of this *Pannomion*, as far as practicable, be prepared: to the whole of the *generally applicable* matter, expression being given in *printed* forms: while, for the reception of the *individually applying* matter, adequate *spaces* will, of necessity, be left in blank. Thus will *uniformity* and *certainty* be maximized; *expense* minimized.

Instructional.

ART. 39. In a more particular degree, to the business of the Judiciary Department, will the *All-comprehensive Formulary* thus composed be found applicable: and, to the portion composed chiefly of mandates with their responses, will therein be added that composed of *conveyances* and *contracts: instruments* which, while to the judge they serve in the character of eventual *evidences*, serve, in the meantime, to the parties respectively interested, in the character of so many particular *laws:* the parties contributing the *directive* matter, the Legislature the *sanctionative*.

Expositive.

ART. 40. By an *arrangement* understand the result, whatever it be, of any human *act*, and consequently of any *mandate* emaning from the Legislative, or any other department of the State. Fictitious is the sort of entity of which this word is the name. In so far as *execution* and effect have been given to any law or to any mandate of the Prime Minister—of a Minister—or of a Judge,—an *arrangement* may be said to have been *made* by it. The effects will, as above, be of the *ephemeral* or of the *permanent* kind, according to the nature of the case.

Expositive.

ART. 41. *Institutions* and *Establishments*. Both these fictitious entities are comprised under the generic appellative *arrangement*. How far soever their respective imports may be from being determinate,—most usually conveyed by the word *institution* seems to be the idea of an arrangement, carried into effect *without* any concurrent operation on the part of *government*, in any of its departments; by the word *establishment*, an arrangement carried into effect *by* government. Witness the all-comprehensive aggregate styled the *Official Establishment*, with its several branches: the Official Establishment,—the vast fictitious receptacle, in which are considered as included all *functionaries*.

Instructional.

ART. 42. Such are the *subject-matters*, which, as will be seen, require to be kept constantly in view, on the occasion of the *ordinances and mandates*, by the issuing of which those *arrangements* will be made, by which the several *functions* will be created, and at the same time allotted to the correspondent classes of persons, thence denominated *functionaries*. In Section 7, *Statistic function*, exemplifications of the several different sorts of these subject-matters will be found.

Instructional.

ART. 43. *Uses* looked to, in and from this analysis, are the following—

1. Affording ground and invitation for judgments to be passed, as to what, if any, portions of matter, properly belonging to this part of the field of government, have been omitted.

2. By survey thus taken of the points of *agreement* and *diversity* between the several objects,—maximizing, on the part of the conceptions respectively formed and entertained in relation to them, the desirable properties of *clearness* and *correctness*, at the same time with *comprehensiveness*.

Enactive. Expositive.

Art. 44. First, as to functions regarding persons. These are—

I. The *Locative:* exercised by placing individuals in the several official situations. It is as to persons what the presently mentioned *procurative* is as to things and money. As to this function, see Section 16, *Locable who;* and Section 17, *Located how.*

II. The *Self-suppletive:* exercised by giving location, actual or eventual, to Deputes, and thus providing for the insufficiency in number or aptitude on the part of Principals: another mode of the *procurative.*

III. The *Directive:* exercised by giving direction to the conduct of Deputes or Subordinates, in relation to the business of the Sub-department.

IV. The *Dislocative:* exercised by removing Deputes or Subordinates out of their several situations. This is as to *persons* what the presently mentioned *eliminative* is as to *things.*

Sub-modes of location are—

1. *Allective,* or say *remunerationly operating,* or say *engagement;* to wit, by free *consent* and *contract:* function, the *conductive.*

2. Compulsive, or say *punitionally operating,* or say *pressing;* to wit, without consent: function, the *compulsorily procurative.*

Bis-sub-modes of location, allective and compulsive together, are—

1. Promotion in the same line.
2. Simple dislocation.
3. Suspension.
4. Transference permanent to a superior grade in a different line.
5. Transference temporary to a superior grade in a different line.
6. Transference permanent to an inferior grade in a different line.
7. Transference temporary to an inferior grade in a different line.
8. Transference permanent to an equal grade in a different line.
9. Transference temporary to an equal grade in a different line.

Enactive. Expositive.

Art 45. Next as to functions regarding things: things immoveable, things moveable, and money, included.

V. The *Procurative:* exercised by procuring and attaching to the service the things in question. It is, as to *things* and *money,* what the *locative* is as to *persons.*

Enactive. Expositive.

Art. 46. Sub-modes of *procurement* are—

1. *Purchase:* function, the *emptive.*
2. *Hire:* function, the *conductive.*
3. *Fabrication:* function, the *fabricative.*
4. *Requisition:* to wit, from some other Department or Sub-department: function, the *requisitive:* followed (in so far as the requisition effects its object) by
5 *Receipt:* to wit, *ab intra:* function, the *transreceptive:* wherein is supposed, and of necessity included, as exercised in the other Department or Sub-department:—
6. *Transmission:* to wit, to this Department: function, the *transmissive.*
7. If the article so received had been antecedently issued, receipt is *retroacception:* function, the *retroacceptive;* correspondent, the *retrotransmissive.*

Enactive.

Art. 47. 1. Requisite exceptions excepted, the exercise of the *procurative* function will be constantly preceded by a correspondent exercise given to a correspondent preliminary function, styled the *requisitive,* and a thereupon consequent mandate, styled a *procurement mandate:* as to which, see Section 8, *Requisitive function.*

Enactive.

Art. 48. VI. The *Custoditive:* exercised by keeping the things in a condition fit and ready for service. As to the person or persons to whom it should be committed, see Section 7, *Statistic function.* Bissection II., Original Outset Books.

Enactive.

Art. 49. VII. The *Applicative:* exercised by the actual application of the things to the purpose of the service, according to the nature of the service, and the things. It is as to *things* what the directive is as to *persons.* Applied to money, it coincides with the *eliminative,* which see. As to this function, see Section 7, *Statistic function.* Bissection III., *Journal Books.*

Enactive.

Art. 50. VIII. The *Reparative:* exercised by causing the things to be again fit for the service, after they have ceased to be so.

Enactive.

Art. 51. IX. The *Transformative:* exercised by the giving to the *matter* of the thing in question another *form.* As to this function, see Section 7, *Statistic function.* Bissection III.

Enactive.

Art. 52. X. The *Eliminative:* exercised by removal of the thing in question out of the custody of the functionary in question.

It is as to *things* and *money,* what the *dislocative* is as to *persons.*

Enactive.

Art. 53. Submodes of elimination are—

1. As to things, in the case in which application to use consists in rapid and destructive *consumption,*—for example, in the case of things applied to the purpose of food, drink, heating, lighting, explosion,—application accordingly: function, the *consumption-authorising.*

2. *Sale:* function, the *venditive.*

3. *Donation,* or say *gift:* function, the *donative.*

4. *Letting out to hire:* function, the *lease-letting,* or say the *mercede-locative.*

In this case, in so far as the contract has been fulfilled, follows *retroacception:* function, the *retroacceptive:* a submode, as above, of the *procurative.* If the lessee be—not an individual at large, but the appropriate functionary belonging to some other Sub-department or Department,—correspondent and precedent to such *retroacception* will have been *retrotransmission* from the last-mentioned Sub-department or Department, as above: function, the *retrotransmissive.*

5. *Commodation,* or say *lending out:* function, the *commodative.*

6. *Ejection,* without making use of it in any shape, or transmitting it to any other Sub-department or Department: *ejection,* to wit, on the supposition of its being valueless: function, the *ejective.*

Enactive. Expositive. Instructional.

ART. 54. XI.—The *Inspective:* exercised by surveys made, preparatory to exercise eventually given to the *directive* function. To it must be added, or in it included, the *quasi-inspective.* As to this, see Section 11, *Information-elicitative function.* It has for its objects, in a more particular manner than any of the former, two distinguishable, howsoever intimately connected, operations or courses of action: to wit, 1, maximization of the aggregate of good, producible by *serviceable* dispositions made of the subject-matters in question: 2, minimization of the aggregate of evil, producible by the *dis*serviceable dispositions and accidents to which they stand respectively exposed.

Instructional. Expositive.

ART. 55. As often as, for the exercise of the Inspective function, change of place is necessary, a different denomination may be of use in speaking of it: to wit, the *visitative.* As to this, see Section 9, *Inspective function.*

Enactive. Expositive. Instructional.

ART. 56. Now, as to functions regarding PERSONS, THINGS, MONEY, and OCCURRENCES. These are—

XII.—1. The *Statistic:* exercised by statements made of the state of *persons, things,* and *money,* belonging to the Sub-department at the time in question, and of such knowledge-worthy *occurrences* as have taken place in relation to those objects respectively: including not only such *occurrences* as, with reference to the Sub-department in question, and the Official Establishment of which it makes a part, may be styled *interior,*—but also, among those which, with relation to it are *exterior,* all such by which a demand may be produced, for exercise to be given, in this or that particular manner, to any of the functions belonging to it: say accordingly—*exterior* relatively *important,* or relatively *influential* occurrences: with mention made of the *times* and *places* at which the occurrences respectively occurred: together with deductions, exhibiting such *contingencies,* or say *eventually succeeding occurrences* of the like nature as seem most reasonably to be expected, and the exercise most proper to be given to the *directive* function in contemplation of them.

Enactive. Expositive.

ART. 57. XIII.—2. The *Registrative,* or say *Recordative:* exercised, by the arrangements and operations, by which, in conformity to corresponding ordinances and mandates, the accounts, given at different periods by the exercise of the statistic function, are kept in contiguity, and in a regular series, for the purpose of reference and comparison. As to this, see Ch. viii. PRIME MINISTER; Section 10, *Registration System.*

Enactive. Expositive.

ART. 58. XIV.—3. The *Publicative:* exercised, by the publicity given to the produce of the correspondent part of the *Registration* system. See Ch. viii. Section 11, *Publication System.*

Enactive. Expositive.

ART. 59. XV.—The *officially informative,* or say *Report-making* function: exercised by a subordinate functionary, by communication, made to his superordinate, of a discourse called a *Report:* in which expression and arrangement are given to a body of evidence, having for its purpose the constituting, or contributing to constitute, an appropriate ground in point of *fact,* for exercise to be eventually given on some particular occasion, to some function or functions, by the superordinate. It may, in the whole or in any proportion, consist of evidence, elicited by the thus *information-giving functionary,* with or without *comments,* having for their object the affording assistance to judgment, and consequent action on the part of the *information-receiving* functionary. See further, Section 10, *Officially informative function;* and Section 11, *Information elicitative function.*

Enactive. Expositive. Instructional.

ART. 60. Lastly, as to functions regarding PERSONS, THINGS, MONEY, INSTRUMENTS OF STATISTICATION REGISTRATION and PUBLICATION, ORDINANCES, and consequent ARRANGEMENTS, having place in relation to the several above-mentioned *subject-matters.*

Enactive. Expositive.

ART. 61. XVI.—The *Melioration-suggestive:* exercised in so far as,—any of those same subject-matters presenting themselves as needing *reform,* or being susceptible of *improvement,*—indication is given of a *change,* supposed to be adapted to one or other of those two intimately connected, often undistinguishable, ever bene-

ficial, and, so far as possible, desirable, purposes.

Enactive. Expositive. Instructional.

Art. 62. Of the sorts of *things* here in question, some there are, the need of which has place, in every Department and Sub-department, whatsoever be the nature of the business of it: others, the description of which will be different according to the nature of the several branches of service carried on in the several Sub-departments.

Enactive. Expositive.

Art. 63. By the *instruments of statistication and registration*, understand—the several portions of written discourse and other permanent signs, if any, employed in the exercise of those same functions. They will be found distinguishable into—1, the *elementary*, to wit, the several individual *entries*; 2, the *aggregate*, to wit, the several *Register Books*, in which the several entries are inserted.

Enactive. Expositive.

Art. 64. Of the sorts of *things*, the need of which will have place in *every* Department and Sub-department, examples are as follows:—

I. Things unmoveable.

i. The *edifice* or *apartment*, in which the business of the Department or Sub-department is carried on. As to this, see Section 26, *Architectural arrangements*.

ii. The *land*, if any, attached to it.

II. Things moveable.

iii. 1. *Furniture*, and other such part, of the moveable stock as are put to use otherwise than by rapid consumption.

iv. 2. *Stationery* ware: that is to say, instruments and materials employed in writing.

v. 3. Instruments and materials employed in lighting, warming, and cooling. As to these several matters, see Section 7, *Statistic function*—Bissection iv. *Loss Books*.

Expositive.

Art. 65. Functions mutually *competitional*, or say *antagonistic*. Understand by this denomination those functions, as to which, on this or that occasion, option may require to be made, by the appropriate functionary, as to which of them, exercise shall on that same occasion, be given to.

Expositive. Instructional.

Art. 66. Of functions capable of thus coming into competition, examples are the following:—

I. Under the *procurative*, its several modes, to wit, the *emptive*, the *conductive*, the *fabricative*, and the *transreceptive*.

Expositive. Instructional.

Art. 67. Of subject-matters in relation to which such competition is most apt to have place, examples are the following:—1, Edifices and ground-works of various sorts; 2, Navigable vessels; 3, Ship-stores of various sorts; such as masts, yards, sails, and cordage; 4, Arms and ammunition of various sorts: in particular, gunpowder.

Expositive. Instructional.

Art. 68. II.—So likewise, during the continuance of the *custoditive*, will be apt to antagonize the *applicative*, the *reparative*, the *transformative*, and the several modes of the *eliminative*; to wit, as above, the *venditive*, the *lease-letting*, the *transmissive*, and the *ejective*.

Expositive. Instructional.

Art. 69. III.—So in the Domain Sub-department in particular, antagonizing functions will be the *applicative* and the *lease-letting*, or say the *mercede-locative*.

Expositive.

Art. 70. By the *applicative*, understand in this case the function, exercised by the keeping in hand the aggregate mass of the things which are the subject-matters of the property in question,—on account of the Government and the public, applying them to their respective uses, —and, on account of Government, and thereby of the public, making, in respect of money, the appropriate *expenditure*, and reaping therefrom the *profits*.

Section V.

Subordination-grades.

Instructional.

Art. I. In the several Administration Sub-departments established by this Code, divers *degrees* or say *grades*, in the scale of subordination, will be found necessary: necessary thereupon will be found expository matter, under the subheads following:—

1. Subordination—its *efficient causes*.
2. *Superordinateness* and *superiority*—their difference.
3. Super and sub-ordination—their *grades*.
4. Subordination—*accountability*—*responsibility*—their mutual relation.
5. Ulterior grades—*efficient causes of demand* for them.
6. Connexion between demand for *grade* and demand for *pay*.

Expositive.

Art. 2. Subordination supposes *superordination*. Subordinateness is a mode of inferiority; superordinateness, of superiority: for the modes, see Art. 4.

Expositive.

Art. 3. Of subordination, the efficient cause is—*power*: viz. of the superordinate in relation to the subordinate.

Instructional. Expositive.

ART. 4. *Modes* of power necessary, are the following—

1. Power of *direction:* corresponding *function*, the *directive*.

2. Power of *suspension:* corresponding function, the *suspensive*.

3. Power of *dislocation:* corresponding function, the *dislocative*.

4. Power of *punition:* corresponding *function*, either the *punitive*, or the *punifactive*.

5. Power of *suppletion*, that is to say, of fresh location, in case of suspension or dislocation: corresponding *function*, the *suppletive*.

Modes of power, not necessarily but incidentally capable of being usefully employed, are, in this case, powers *transferential*, permanent or temporary, to an equal or inferior grade, and *sistitive*, or say *promotion-stopping*. As to these, see Section 20, *Insubordination obviated*, and Section 21, *Oppression obviated*.

Instructional.

ART. 5. In the hands in which the directive function is, must be the *suspensive* and *temporarily suppletive:* in the superordinate's must be the permanently suppletive: in the superordinate's, to a certain extent, must be either the *punitive*, or the *punifactive:* in a Judicial functionary must, for this same purpose, be the punitive to an ulterior extent.

Instructional. Ratiocinative.

ART. 6. Either with the *directive*, the superordinate must have the *suspensive* function, or he cannot be made *responsible* for misconduct on the part of the subordinate. But, the degree of the necessity will depend upon the nature of the work, coupled with the distance between the grade of the directing functionary and that of his next superordinate.

Instructional. Enactive.

ART. 7. In respect of *punitive* power, the Judiciary functionaries are superordinate to the Administrational in all Sub-departments: not so, in respect of directive, suspensive, dislocative, transferential, or suppletive.

Expositive.

ART. 8. To the several grades in the scale of subordination, one beneath another, taking that of the Minister for the highest and the common object of reference, attach the several denominations following, taken from the numeration table.

1. Minister's immediate subordinate, call him *Prime Subordinate:* correspondent grade of subordination, grade the first.

2. Minister's immediate subordinate's immediate subordinate, call Minister's *Bis-subordinate:* grade, the second.

3. Minister's immediate subordinate's immediate subordinate's immediate subordinate, call Minister's *Tris-subordinate:* grade, the third: and so on through the *numeration* table.

Instructional. Ratiocinative.

ART. 9. In the present case, of necessity is the highest grade taken for the common object of reference in forming the scale of corresponding denominations. For, in every department, the name of the highest will at all times be the same. But the number of the grades,—and consequently in this mode of denomination, the name of the lowest,—will continually be liable to be on the change.

Expositive.

ART. 10. Without and instead of the word *superordinateness*, the word *superiority* would not, on this occasion, have answered the purpose. Superordinateness is not either identical or co-extensive with superiority; subordinateness, with inferiority: *superordinateness* is but *one mode* of superiority, subordinateness, of inferiority. Without superordinateness, superiority may have place even by means of legal power; as well as without being accompanied with legal power: I. By means of legal power: to wit, over a third person: the third person being or not being in a state of subordinateness as to either or both the superiors, having in relation to such third person, more power than the inferior has.

Expositive.

ART. 11. Example. If by directive and suspensive power, a superordinate in the Administrative Department can produce more suffering on the part of a subordinate, than, in execution of a law, bearing upon any part of his conduct, the Judge can,—the superordinate member of the Administrative will, in so far, be superior in power to the Judge.

Expositive.

ART. 12. So, to an indefinite extent is superiority universally considered and spoken of as having place, without being accompanied with legal power in any shape on the part of the superior over the inferior. In this case, the field and line of comparison may be the quantity possessed by the superior and inferior respectively of any desirable quality or possession. Examples of such qualities and possessions are as follows:—

1. Personal strength.
2. Personal beauty.
3. Moral accomplishments.
4. Intellectual accomplishments, (cognitional.)
5. Intellectual accomplishments, (judicial.)
6. Useful or graceful activity in any line.
7. Skill in pastimes of any sort.
8. Agreeableness in conversation, and private intercourse, say *urbanity*.
9. Opulence.
10. Factitious honour and dignity.
11. Influence of will on will.
12. Influence of understanding on understanding.

Instructional.

Art. 13. Note here the distinction and difference between *subordinateness* with the attendant *specific inferiority* in respect of *power* on the one part, and *inferiority* at large on the other part.

Expositive.

Art. 14. Example. Foreign Relation Department: *political missionary* line, Scale of Grades in rank, beginning with the highest;* in no one of them correspondent subordinateness on the part of the inferior.

I. *Rank.*

1. Ambassador extraordinary.
2. Ambassador ordinary.

II. *Rank.*

3. Envoy.
4. Minister Plenipotentiary.

III. *Rank.*

5. Minister.
6. Resident.
7. Chargé d'Affairs.

Ratiocinative.

Art. 15. Even in a Representative Democracy, observance of these distinctions is necessary: cause, the need which, under this as under every other form of Government, there is, of keeping up communication with the Governments of other states.

Instructional. Expositive.

Art. 16. In the Anglo-American Union, the highest grade for which provision is made in this line, is that of Envoy Extraordinary and Minister Plenipotentiary. It rests with those to whom it belongs, to show why even the lowest grade might not as well suffice as under Frederic styled the Great of Prussia, an Envoy or Resident of the lowest grade (the Chevalier Mitchel) sufficed: sufficed, even at the Court of London, on which the monarch was dependent for his existence. In that case, the importance of the *sending* state, and of its business to the state *sent to*, was trusted to as a sufficient security for the requisite degree of attention. With those to whom it belongs, it rests to show why the case should be otherwise in the instance of the Anglo-American Democracy.

Expositive. Ratiocinative.

Art. 17. Correspondent and concomitant to subordinateness is *accountableness*. By *accountableness* understand subjection to the obligation to exercise the *statistic* function, (as to which see Section 4,) as to operations performed by the subordinate, in consequence of, and compliance with the corresponding exercises given to the *directive* power of the superordinate: for, without such accountableness, the *directive* power cannot be efficient.

Expositive. Instructional.

Art. 18. Such obligation, on the part of the accountable *subordinate*, supposes correspondent *powers* or *rights* on the part of the *superordinate; powers*, in so far as exercisable without recourse to a Judge: viz. by means of suspensive power and punifactive power, as per Arts. 4, 5, 6, 7: *right*, in so far as not exercisable but by means of recourse to a Judge, for the purpose of giving to the *punifactive* power the effect of *punitive*.

Instructional.

Art. 19. Of *accountableness* at large, accountableness in respect of *money* is the mode most frequently brought to view.

Instructional.

Art. 20. Eventual obligation of making *transfer* of the subject-matter is a natural and frequent, but not necessary accompaniment of it.

Expositive.

Art. 21. Correspondent and concomitant to subordinateness, and accountableness is *responsibility*: efficient causes the same.

Instructional. Ratiocinative.

Art. 22. By superordinateness, no increase of pay is rendered necessary or requisite. Pay, as per Section 17, *Located how*, is, by the pecuniary competition, minimized. Power being, as well as money, part and parcel of the matter of reward,—of any *addition* to *power*, the effect in respect of demand for emolument, is —not addition, but subtraction.

Instructional. Ratiocinative.

Art. 23. Nor, by superiority in *factitious dignity*: under this Code, no factitious dignity being admitted.

Ratiocinative. Instructional.

Art. 24. Nor, by need of official intercourse: the manifold writing system, as per Ch. viii. Prime Minister, Section 10, *Registration System*, minimizing the expense of transmission of statistic matter, wheresoever the information conveyed by it can be of use.

Expositive.

Art. 25. In every case where, between one functionary and another,—intercourse, either for the purpose of direction, that is to say of *directiveness* and *directedness*, is needful, a grade in the scale of subordination has place.

Instructional. Ratiocinative.

Art. 26. In any Sub-department,—in the shape of constant *account-giving*, need of subordinateness may have place, on the part of

* From Martens's Précis du Droit des Gens, &c., Gottingen, 1801, section 191: in some of the instances the distinction not altogether determinate.

a functionary, in whose instance there is no need of his taking constant *direction* from the superordinate to whom he is thus accountable.

Uses of account-giving in this case.

1. Securing constancy of supply,—in respect of appropriate stock in all shapes, and money, necessary and sufficient for the branch of service under his charge.

2. Prevention of needless delay.

3. Prevention of misconduct in every other shape; to wit, by fear of eventual punishment.

Expositive.

ART. 27. Examples.

1. Army Sub-department: appropriate operation, construction of fortifications.

2. Navy Sub-department: appropriate operation, construction of navigable vessels, ships, docks, &c.

3. Interior Communication Department: appropriate operation, construction of canals, bridges, tunnels, &c.

4. Domain Sub-department: appropriate operation, working of mines. In all these cases the operations of planning, and directing the execution, will naturally be performed—not by the Minister, but by an appropriate skilled functionary. Not only to such his immediate superordinate, will account be accordingly given by such his subordinate, but also to the Minister; including a regular account of progress.

Instructional.

ART. 28. By mere distance, without need of any such determinate superiority as per Art. 26, in respect of appropriate skill, a demand may be created for a grade in the scale of subordination for the purpose of *direction*.

Expositive.

ART. 29. Examples. Foreign Relation Department: station of *Commercial State Missionaries*, or say Consuls. For the service of two stations,—at the same distance, the one as the other, from the Foreign Relation Minister's official residence,—no demand can have place for a Consul at the one, and a Vice-consul at the other. But between station and station suppose a certain distance,—it may be necessary that, under one such agent, there may be one or more,—taking direction from him, and even eventually undergoing dislocation by him, followed by temporary location of a substitute, before those functions can respectively be exercised by the Minister.

Instructional. Expositive.

ART. 30. So perhaps it may happen in the case of the *Letter-post* branch of the business of the *Interior Communication Minister's* Sub-department. Examples.

1. Residence of the Foreign Relation Minister, in *Europe*, Stations of Consul and Vice-consuls in *America*.

2. Residence of the Foreign Relation Minister on the borders of the Atlantic, as in the *Anglo-American United States*, Station of Consul and Vice-consuls, on the borders of the *Pacific*.

Instructional. Ratiocinative.

ART. 31. To the *Finance Minister*, in respect of his Sub-department, in no other Sub-department is any one of its functionaries in a state of *subordinateness*. But, in relation to that same *Minister*, in every Sub-department, all functionaries are in a state of *accountableness:* of accountableness in regard to *money*, and thence in regard to the state of receipts, issues, losses, needs and expectancies as to money,—that by his care, in so far as depends upon him, supply may at all times be at their command, as to what is needed by them respectively in the shape of *money:* in regard to appropriate *stock* in all shapes, and thence in regard to the state of receipts, issues, losses, needs, and expectancies, as to such appropriate stock—that, by the same care, supply may at all times be at their command, as to what is needed by them respectively as to stock in those several appropriate shapes, by means of *money:* of money employed in the *procurement* of it.

Instructional.

ART. 32. At the outset, the Legislature will, in each Sub-department, establish such grades of subordination as at that time appear needful: adding to, or subtracting from, the number, at all times, in any such manner as experience, or change of circumstances, may indicate.

Instructional. Expositive.

ART. 33. Of Sub-departments in which the number of grades needful will naturally be smallest, Examples are—

I. *Election Minister*—Subordinates to him needful.

1. Election Clerks at the several *District Election Offices*, as per Ch. vi. LEGISLATIVE; Section 7, *Election Offices*.

2. Vote-receiving Clerks at the several *Sub-district Election Offices*.

Instructional. Expositive.

ART. 34. II. *Legislation Minister*. What may happen is—that, under him no class of functionaries may be needful, other than that of *Writing Clerks*, in addition to his own Depute, as per Section 6, *Self-suppletive function*. (See Art. 42.)

Instructional. Expositive.

ART. 35. Of Sub-departments, in which the number of grades will necessarily be the greatest, Examples are—

III. The *Army Sub-department*. For the efficient causes of the demand, see Ch. x. DEFENSIVE FORCE, Section 1, *Branches*, Section

default of the first, a third in default of the first and second, and so on. But, only in case of emergency will he execute any such instrument: and, on his responsibility, he will cancel it, having, if issued, called it in, so soon as the emergency has ceased.

Expositive.

Art. 7. Examples of cases producing a demand for the service of a Depute, permanent or occasional, are the following:

1. A sudden influx of business, with particular need of despatch.

2. Infirmity, whether of body or mind, on the part of the Principal, rendering him unapt, either altogether or in part, for the performance of the business.

3. Need of his attendance, at a place where the business cannot accompany him without preponderant inconvenience: for instance, when absent from Office, on an *Inspection progress*, as per Section 9: or when on attendance in the *Legislation Chamber*, as per Section 8.

Enactive.

Art. 8. Locable in the situation of Minister Depute permanent are all those, and those alone, who are so in that of Minister Principal, as per Section 16, *Locable who.*

Enactive.

Art. 9. Dislocable or suspendible at any time is the Minister Depute by the Principal, as likewise by any of the authorities by which the Principal is dislocable as per Section 18, *Dislocable how:* and this without the judicial forms such as those made requisite in and by Section 21, *Oppression obviated.*

Enactive.

Art. 10. Exceptions excepted, this same power of self-supply, together with the obligation of exercising it, and the dislocation and suspension powers, as above, attached to it,—will be possessed—not only by the *Minister* of every Sub-department, but by the several functionaries, occupying the several situations, in the several grades, *subordinate* to that of Minister.

Enactive. Instructional.

Art. 11. Exceptions are—

1. In the *Army* Sub-department, the offices belonging to the *Military*, or say *Professional* branch.

2. So, in the *Navy* Sub-department.

3. Such offices, if any such there should be, in the case of which, by special reasons, it shall have been made appear to the Legislature that this institution is unsuitable.

Instructional. Ratiocinative.

Art. 12. Beneficial effects resulting from the allotment of this function to functionaries belonging to the Administrative Department, are the following—

1. Number of functionaries at all times sufficient, at no time redundant.

2. Frugality secured, by exclusion of pay for superfluous and needless number of principal unpaid functionaries.

3. Frugality secured, by the gratuitous obtainment of all but one of whatsoever number of functionaries may happen to be respectively needed for the several offices.

Instructional. Ratiocinative.

Art. 13. No ground has place for any such apprehension as that of a deficiency in the number of apt persons ready and willing to serve as Deputes, in any office in which there are persons serving as Principals. Reasons are—

1. Of the offices, to which either power or honour in any shape is attached,—in few, if in any, would be found (it is believed) any deficiency, in the number of individuals, whose services remuneration in both these shapes, or even in no more than one of them, would be sufficient to engage, without remuneration in a pecuniary shape, either in possession or expectancy: and, proportioned in value to whatever remuneration there is in possession, will be remuneration in expectancy: always understood, that, because remuneration in these non-pecuniary shapes might suffice for official service, with the laxity of attendance, which, under other systems, is to a great extent tolerated, it would not follow, that remuneration in these shapes would suffice for procuring the closeness of attendance, which, under the present system, is uniformly exacted.

2. In point of experience, generally speaking, whatsoever profit-seeking occupation persons of adult ages are engaged in, in the situation of *masters*,—other persons in adequate number are, in a non-adult age, ready and willing to learn and carry on in the situation of *apprentices*.

In every office, the relation of a Depute to the Principal is analogous to that of an Apprentice to a master in a non-official occupation.

Section VII.

*Statistic function.**

Bis-section the First. All Books together.

Instructional.

Art. 1. This Section has for its object the bringing together in the aggregate, all the several *operations*, which, in the exercise given to the *statistic* and *recordative functions*, as applied to the business of the *Administrative* De-

* For farther exposition of the function considered in this section, see the Rationale of Evidence in vols. vi. and vii. Index, *Statistics: Registration.* —*Ed.*

partment, can require to be performed: the *operations* themselves, and thence the *subject-matters* in relation to which, the *instruments* by the help of which, and the *official places* in which, those same operations are carried on.

For any such purpose as that of *original information*, many of the particulars which it will here be necessary to present to view, will be apt to appear, and indeed would be, needless and useless: none however are there, to which, incidentally, it may not happen to be found needful and useful, for the purpose of *reminiscence*. This distinction should never be out of view. Moreover, as to information, between the *needful* and the *needless*, the distinction will always be, in great measure, not *absolute* but *relative;* that which is needless to one person, being needful to another: and, to complete a whole, and render every part intelligible, particulars, which, taken each of them by itself, would be altogether trivial, may, to a considerable extent, be necessary.

Instructional. Expositive.

ART. 2. In regard to this function, and the exercise to be given to it, topics for consideration are as follows—

1. *Objects*, or say *ends in view*, *uses*, and thence *purposes*, of the several *operations*, in this as in every other part of the business of this and the several other Departments enumerated in Section 2. Art. 1. Expressed in the most general terms, these objects may be distinguished into—1, maximization of appropriate good;—2, minimization of relative evil.

2. *Subject-matters*, in relation to which the operation is performable. As to this, see Section 4, *Functions in all.*

3. *Relative times*, of the existence of those same subject-matters, in such their character. These are—1, entrance; 2, continuance; 3, exit.

4. *Entries*, that is to say, portions of written discourse, by the penning of which, the act of registration, as to those several subject-matters, is performed.

5. *Books:* Register Books, composed of so many aggregates of those same entries.

6. *Uses* in detail, derivable from the matter of these several Books: relation had to the respective businesses of the several Sub-departments.

7. *Offices:* Official Residences, in which this system of registration will be carried on.

8. *Securities* for *correctness* and *completeness* in the aggregate mass of the above-mentioned entries.

Under these several heads, follow in the order here expressed, the appropriate details.

Ratiocinative.

ART. 3. I. *Ends in view.* 1. *Maximization of appropriate good.* Way in which registration contributes to this end:—presenting to view such information as to the *past*, as is necessary to the making, in regard to each several business, appropriate provision, of the several *subject-matters*, for the *future*.

Instructional. Ratiocinative.

ART. 4. Proportioned to the *clearness*, *correctness*, and *completeness*, given to the results, will be the *usefulness* of this operation, and those its results. Under the worst-constituted governments, more or less of information, in relation to these several subject-matters, is obtained and preserved: here, the endeavour is —1, to optimize the quality; 2, to maximize the quantity. Yet, on no occasion, except in so far as the benefit from the operation promises to be preponderant over the burthen of the expense.

Instruments employed in relation to this end are—the proposed *Outset Journal*, *Loss*, and Subsidiary *Books:* as to which, see Bissections II. III. IV. and V.

Ratiocinative. Enactive.

ART. 5. 2. *Minimization of relative evil.* Way in which registration contributes to this end:—presenting to view past burthens in the shape of *losses*, with their causes:—on the part of directing functionaries, appropriate aptitude, —moral, intellectual, and active, being supposed the same in all cases,—the more clear, correct, and complete, the information possessed by them, under the several appropriate heads, the greater the probability of their preventing the like losses in future.

Instruments employed in relation to this end are—the proposed *Loss Books:* as to which, see Bissection IV.

Expositive.

ART. 6. II. *Subject-matters of registration.* As to these, see Section 4, *Functions in all.*

Instructional. Expositive. Ratiocinative.

ART. 7. III. *Relative time.* Periods of relative time, as above, are these: to wit, 1, *entrance;* 2, *continuance;* 3, *exit.*

Whatsoever be the Sub-department,—only in so far as *employment*, or say *application to use*, is made of it, can any such article of stock be made contributory to the good of the service of that same or any other Sub-department. In every case, entrance and continuance have therefore, or at least ought to have, and are supposed to have, for their design and end in view, employment, or say application to use.

Instructional. Expositive.

ART. 8. Of application to use, the description will, of course, be variable, according to the business of the Sub-department, and the nature of the article.

Of some sorts of articles, application to use is made during their *continuance* in the service; examples are—instruments of all sorts, employed in works of all sorts: of others, no otherwise than by means of their *exit:* examples are—1, articles employed in nourishment; 2, articles

employed in the production of heat and light; 3, missile articles employed in war; 4, money.

Instructional.

Art. 9. IV. *Entries.* As in all other portions of discourse designed for instruction, so, in these,—*properties* desirable will be in each. —1, *clearness;* 2, *correctness;* 3, *comprehensiveness;* 4, in the aggregate of all, taken consecutively and collectively, 1, *comprehensiveness;* 2, *symmetry.*

Instructional.

Art. 10. Applied to the present case, an operation, which appropriate *symmetry* presents itself as requiring, is the following—

In case of any change of method as between any succeeding year and the preceding years, —for convenience in respect of reference, to each aggregate of entries penned before the change, substitute for use a *fresh Book*, exhibiting the same matter in the form given to those penned *after* the change: for security against errors, *preserving* at the same time, in the original form, those penned *before* the change.

Enactive. Expositive.

Art. 11. V. *Books. Register Books.* Taken in the aggregate, those which present themselves as adapted to the present purpose will be found distinguishable, in the first place, into 1, *Service* Books; 2, *Loss* Books. In the *Service Books* will be recorded the *operations*, by which the business of the respective Sub-departments is carried on: in the *Loss Books*, indications concerning the *loss*, which, in its various shapes, has been taking place in relation to the several subject-matters, as above, in the course of the service.

Enactive. Expositive.

Art. 12. Distinguishable will the *Service* Books be into 1, *Outset Books*, or say *Inventories:* 2, *Journal Books*, or say *Diaries.*

Outset Books again, into 1, *Original* Outset Books; 2, *Periodical* Outset Books: these Periodical Books commencing, each of them, at the commencement of some *period*, subsequent to the date of the *Original Outset* Book, which is also that of the earliest *Journal* Book.

Divisible into *Specific* Books will be each of the above-mentioned Books: *principle* of division, the subject-matter of registration.

The *Original Outset Book* into four Specific Books, to wit, the *Personal*, *Immoveable*, *Moveable*, and *Money* Books: so likewise the *Periodical Outset Book*, and the *Loss* Book.

The *Journal*, into the same four Books, with the addition of the *Occurrence* Book.

Relation had to these *Specific* Books, those within which they are respectively contained may be styled *Generic* Books. Of these same Specific Books, each will moreover be divisible, according to the three periods of relative time, into three *Sub-specific* Books: to wit, *Entrance*, *Continuance*, and *Exit* Book.

Enactive. Expositive.

Art. 13. (1.) *Original Outset Book.* This will consist of an *Inventory* of the whole *stock* of the Sub-department, or Subordinate Office in question: such stock being distinguishable into the four above-mentioned subject-matters, as they exist on the day of the commencement of the System of Registration here delineated.

Enactive.

Art. 14. (2.) *Journal.* This will consist of entries recordative of the *occurrences* styled *interior*, which, on the several days of the year, take place in respect of those same subject-matters: added will be such other occurrences of which, under the name of *exterior* occurrences, mention is also made in Section 4, *Functions in all*, Art. 14.

Enactive. Expositive.

Art. 15. (3.) *Periodical Outset Books.* Of these the description could not be given, till after mention made of the *Journal Book.* At the end of a certain length of time, the same causes which produced the demand for the *original Inventory*, will produce a demand for *another*, and so successively for *others:* if between each the lengths of time are the same, they will constitute so many *Periodical Outset Books.* Distinction between *Solar Year* and *Service Year.*—If the day, on which the Original Outset Book bears date, is the first day of that year,—the time intervening between the date of the *Original Outset Book* and that of each succeeding Outset Book, will be a year, commencing on the same day with the *solar* year: if it be any other day, the year which commences with it will require a different denomination, and may be termed a *service year.* Simplicity will require that the need of these distinctions be excluded: this will be done, by placing on the first day of the next solar year, the date of the *second* Outset Book, and so of every *successive* Outset Book.

Instructional. Expositive.

Art. 16. *Super-books* and *Sub-books.* By *Super-books* understand the books kept in the Minister's office: by *Sub-books*, the books kept in the Offices subordinate to his. Correspondent to the denominations of the Offices considered with reference to their *Grades*, will be those of the Books; Offices,—Super-offices, Sub-offices, Bis-sub-offices, Tris-sub-offices; Books,—Super books, Sub-books, Bis-sub-books, Tris-sub-books.

Instructional. Ratiocinative.

Art. 17. VI. *Uses:* to wit, of the above several Books; and, in the first place, of the *Service Books.*

Aggregate, all-comprehensive and ultimate use, maximization of appropriate *good*, or say *benefit*, as above, to and by the service.

Instructional. Ratiocinative.

ART. 18. Particular, elementary, and instrumental uses, these—

1. On each day, showing the *stock in hand* for the next and succeeding days of that same year.

2. Contributing to form a ground for estimation of the *ordinary demand* and correspondent *supply* for the service of the succeeding years.

3. Contributing to present to view, within time, instances of *extraordinary* demand and extraordinary supply.

4. Thence, contributing to the making of timely provision for similar *succeeding* demands.

5. Indicating, in relation to the *real* stock, immoveable and moveable, belonging to the office, the most economical mode of *procurement*, as between *fabrication*, *purchase*, and *hire*, as to the several articles of which it is composed.

6. Furnishing data and standards of comparison, with a view to improvements in *fabrication*, in respect of *serviceableness* and *cheapness:* whether by substitution of more *economical employment* of the same materials, in the same modes,—or of different *modes of fashioning* or putting together those same materials,—or of *more apt* or *cheaper* materials.

7. In regard to *purchase* or *hire*, indicating past *prices* paid, with a view to economy by obtaining the article from the same or other dealers, in better *quality*, or at less *price* paid.

8. In regard to application of stock by *sale* or *lease-letting*,—indicating *past prices* obtained, with a view to *increase of profit* by disposing of the article to the same or other purchasers or hirers, at an increase of price received.

9. In respect of *stowage*, to wit, in *receptacles*, fixed and moveable, (as to which see Bissection II. Art. 8,) for the several moveable articles of stock,—indicating the *demand*, present and future probable, with a view to the prevention of *deficiency* at the several *places* where needed, or the more *economical* stowage of the quantity, actual or future probable.

10. As between *place* and place of *stowage*, —indicating the distribution made of the aggregate amount of stock in hand, as well *personal* as *real*, for the purpose of securing the correspondency between need and supply at each, as against deficiency in one place and redundance in another: this being what may happen, notwithstanding that in the aggregate of the quantity in all places taken together, the correspondence between need and supply, is complete.

11. In case of *redundance*, affording indication of it, with a view to the *stoppage* of any works, the fabrication of which may be in progress,—the *prevention* of any, the fabrication of which, for want of due observation, might otherwise have been commenced,—or the purchase or hire, of any which otherwise might have been purchased or hired; or with a view to the disposal by *sale* or *lease*-letting, of any part, at present needless, and not likely to be needed in future soon enough to warrant the keeping it in hand.

12. Affording evidence of *misconduct*—wilful, or through negligence or rashness—on the part of subordinate *functionaries*, with a view to transference, degradation, dislocation, and punition.

13. Affording evidence in case of misconduct, in the shape of *fraud* or *non-performance of contract* on the part of *non-functionaries*, with whom the office has had dealings: with a view to the obtainment of *remedy* by *satisfaction*, with or without punishment. See Art. 20, as to uses of the *Loss Book*.

14. In case of *extra merit* on the part of subordinate functionaries, indicating demand for *extra remuneration*, see Art. 20.

For more particular uses, so far as regards the *personal* stock, see Bissection the second, Art. 23.

Instructional. Ratiocinative.

ART. 19. Second. *Loss Books.* Their *Uses* are—

1. All comprehensive and ultimate use, minimization of relative *evil*, or say *burthen* to the service, in the shape of *loss*.

Instructional. Ratiocinative.

ART. 20. Particular, elementary, and instrumental uses, these—

1. As to each *individual* loss, preventing or minimizing the instances of its *renewal*, by pointing the attention of those whom it may concern, to its nature, efficient causes, and authors.

2. So, to the *aggregate* annual or other *periodical* amount.

3. Serving for comparison between each and each other year's loss: thereby, for increasing of preventive attention where loss is upon the increase.

4. For the purpose of prevention in future, pointing the attention of inspecting superordinates to loss by *negligence* or *wilfulness* on the part of their *subordinates*, and to loss by *wilful delinquency*, on the part of *non-functionaries*.

5. So, to loss, by the disadvantageous *bargains* with non-functionaries, on the occasion of *purchase* or *hire*, *sale* or *lease-letting*.

6. So, to *extra merit* on the part of subordinates, in respect of the prevention or diminution of loss, with a view to *extra remuneration*.

7. Exciting and keeping up *emulation* among subordinates as to the *minimization* of loss.

8. Pointing the attention of the *Public Opinion Tribunal* to the prevention of loss by the apprehension of its censure, and furnishing it with matter to operate upon.

Instructional. Ratiocinative.

ART. 21. *Efficient causes* of loss may be thus enumerated—

1. Unpreventible *accident* or casualty. Un-

preventible accidents, though by the supposition they cannot be *prevented*, may yet be *foreseen* as more or less probable, and accordingly, in the way of *supply, provided against.*

2. On the part of a directing and custodient functionary, *want* of appropriate *information.*

3. Or, want of adequate and due *attention.*

4. On the part of a directing and custodient functionary, *embezzlement* or *peculation.*

5. On the part of a non-functionary, *stealing* or *fraudulent obtainment.*

Instructional. Ratiocinative.

Art. 22. In a proportion more or less considerable,—the *causes*, the *authors*, and even the *amount* will be out of the reach of ascertainment: for a time at least, even out of the reach of *conjecture*. But, from these uncertainties, no reason results for forbearing or omitting to put upon record, in any case, so much as *is ascertained*, and in some cases, the subject-matter and result of *conjecture*. For the omission of these indications, the only sufficient cause will be—what may have place in regard to supposed *authors* of loss, and is produced by the danger of injury to the reputation, of persons, on whose part no blame, in any shape, has had place. Note here, that evidence not sufficient to warrant legal punishment at the hands of the *Constituted Judicatories*, may yet be sufficient to produce and warrant *censure*, or at least *tutelary suspicion*, at the hands of the *Public-Opinion Tribunal:* and, in this case, as well as the other, the *publicity* given to the *past* transgressions will contribute to the *prevention* of *succeeding* ones.

For the several *shapes* in which loss is liable to have place with relation to the several *subject-matters* of registration, to wit, the several species of *stock*, see Bissection IV.

Instructional. Expositive. Ratiocinative.

Art. 23. VII. *Offices*, in which this system of registration will be carried on.

By the *Office*, understand here the building or apartment in which the business of the functionary in question is carried on. Allotted to every Sub-department, or, as per section 2, *Ministers and Sub-departments*, aggregate of united Sub-departments, there will be at least one *building* or *apartment*. In a Sub-department, to which, under the Minister, belong functionaries in other *grades*, acting each in a separate Office at a distance from his,—his will be the Head Office; theirs, Suboffices, of the several grades,—Bis-suboffices, Tris-suboffices, and so on. If, in any one such Office, need of this registration has place, so, with little or no difference, will it have in every other: in each will accordingly be kept a set of Books, with entries under the same or correspondent heads: call them, according to the grade of the Office, Sub-books, Bis-sub-books, or Tris-sub-books, as above, Art. 16.

BIS-SECTION THE SECOND. ORIGINAL OUTSET BOOKS.

Enactive.

Art. 1. Original Outset Book. I. *Specific Book the first. Personal Stock Book.* Heads of Entry. Examples—

1. Name of the official situation.

2. Name of the individual in all its parts.

3. Time of birth, as far as known: year, month, and day.

4. Place of birth, so far as known: District, Subdistrict, and Bis-subdistrict: if in a foreign country, indications analogous.

5. Condition in respect of marriage, whether Bachelor, Married-man, or Widower.

6. Time of location: year, month, day of the month, and week.

7. Other official situation, or situations, if any, in which he has successively been employed.

8. Remuneration to be received by him: shapes and yearly amount.

9. Office or offices, or other place or places, at which, on the day of entry he is, or at some future days, and what days, is destined to be, employed.

10. Locator, who: designated by his official and personal names.

11. Recommender, if any distinct from the Locator, who; designated in like manner,—for example, a functionary superordinate to the Locatee, but subordinate to the Locator.

12. If, and so soon as, the system of Official *Instruction*, or say *Education*, shall have been established, as per Section 16, *Locable who*, mention of the *Examinations* undergone by him, together with the clusters of branches of art and science, and his rank in each, as per Office Calendar therein mentioned.*

As to the personal stock of the Military branch of the Army and Navy Sub-departments, see Ch. x. Defensive Force.

Ratiocinative.

Art. 2. *Uses* of Entries under the above heads, considered in the aggregate.

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* In the official Office Calendar of the American United States for the year 1817, the heads stand as follows—

Names and Offices.	Compensation, Pay, and Emolument.	State or Country where born.	Where employed.

Title, as follows:—"A Register of Officers and Agents, *Civil, Military, and Naval*, in the service of the *United States*, on the 30th day of September, 1817; together with the *Names, Force*, and *Condition of all the Ships and Vessels*, belonging to the United States, *and when and where built.* Prepared at the Department of State, in pursuance of a Resolution of Congress, of the 27th of April, 1816."[a]

[a] To precede this long title, might not a short one, such as *Office Calendar*, be a matter of convenience?

1. Maximizing and optimizing the service derivable from each such person.
2. Minimizing the loss from him.
3. Indicating his degree of appropriate aptitude in all its several elements.
4. Giving additional efficiency, to the responsibility, imposed in respect of him, on the functionaries by whom he was recommended and located.
5. Crediting him in case of his extra-aptitude.
6. Indicating the aggregate strength and value of the entire personal stock at the outset, with relation to its several purposes.

Instructional.

ART. 3. Sub-departments, in the service of which, the application of this registration system to the *personal* part of the aggregate stock possesses, to wit, in respect of the natural magnitude of their number, a more particular degree of importance. Examples—
1. Army Sub-department.
2. Navy Sub-department.
3. Preventive Service Sub-department.
4. Interior Communication Sub-department: to wit, in respect of the functionaries belonging to the *Letter-post.*

Enactive.

ART. 4. Original Outset Book continued.
II. Specific Book the second. *Immoveable Stock Book.* Heads of Entry, in relation to each article. Examples—
I. The portion of land—its name.
  1. Situation.
  2. Dimensions.
  3. Elevation above the sea.
  4. Form of the surface.
  5. Nature of the soil.
  6. State in respect of culture.
  7. State below the surface, in so far as known or inferred.
II. Erections on the whole or a part.
  1. Aspect.
  2. Exterior form.
  3. Exterior materials.
  4. Exterior dimensions.
  5. Separate Apartments: their lights and dimensions.
  6. Condition, in respect of fitting up.
  7. Furniture.
III. Appurtenances, or say ground-works superficial: as yards, fences, bridges, &c.
IV. Appurtenances, or say ground-works subterraneous: as wells, drains, &c.
V. *Obligations intervicinal*, if any:—obligations of affording partial use of the land or ground-works to the occupiers of contiguous lands.
VI. *Rights intervicinal*, if any:—rights of making partial use of contiguous lands or ground-works.
VII. Uses made of the whole together: separate uses, if any, made of the several parts.
VIII. Persons employed in or about the land and building.
IX. Each person, how employed.
X. Things moveable from time to time brought on the land and stationed, at the day of date, in the buildings respectively.
XI. Keeper or keepers having in charge the whole, or the several parts. Function, the custoditive.
XII. Need, if any, and particulars, of reparation,—as per inspection and estimate.
XIII. Inspector or Inspectors, Estimator or Estimators, who, in this case.
XIV. Aggregate saleable value, as per estimate.
XV. Estimator or Estimators, who.
XVI. Aggregate leaseable value, as per estimate: Estimator or Estimators, who.
XVII. Capacity, and use, of increase, if any; with particulars of the nature, and estimated cost, of the means.

Ratiocinative.

ART. 5. Use, derivable from the confrontation of antecedent estimated cost with consequent actual cost—serving as a security against *waste:* to wit, by commencement of a work with insufficient funds: consequence, either *abandonment* of the work, with waste of the whole expense down to the time of stoppage, value of the materials alone deducted; or else continuance, under the pressure of a burthen unexpected and unprepared for.

On the footing of a mode of payment customarily exemplified in England, the interest of a professional person employed in building is in a state of natural opposition to that of his employer: the particulars of the work needed being settled, the interest of the employer calls upon him of course to minimize the cost; that of the employee to maximize it. Hence, peculation *pro ratâ;* in which case, to gain a comparatively small profit, the *employee* is under the necessity of imposing on the employer an expense many times as great. In this case, the less the apparent and avowed, the greater the unseen and unavowed amount of the remuneration.

For elucidation, take the case of the planning Architect. Intended cost, say £100,000: remuneration of the planning, if he be also the directing Architect, 5 per cent.: at this rate, if the actual cost is exactly equal to the estimated cost, his profit is £5,000. Suppose him then able and determined to extract for himself an additional profit of £1,000, to do this, he must impose upon his employer an additional expense of £20,000.

Expositive.

ART. 6. Original Outset Book continued.
III. Specific Book the third. *Moveable Stock Book.* Heads of Entry. Examples.
1. Sorts, as indicated by the names.
2. Quantities.
3. Quality and conditions, whether perfect, or in any and what degree deteriorated.
4. Purchase, if any, in what instances.

5. If purchased, or hired, price.

6. If manufactured by the strength of the sub-department in question, or any other,—cost of manufacture, as known or conjectured.

7. Year, month, and day of the month, when deposited in the custody of the official keeper.

8. In case of any such articles as are liable to be in a particular degree deteriorated by age, without the deteriorations being readily visible—for example, medicines,—year, when gathered, or brought into a state for use.

9. Place, where stowed: including, according to the nature of the article, as well the outermost place, for example, the *yard*, or the *building*, as the inmost, for example the *shelf* or the *drawer*, say in both cases the *fixed receptacle:* as to which, see the Articles following.

Expositive.

Art. 7. Follows a subsidiary *mimographical* mode of registration, which, in aid of the ordinary *verbal* mode, will be employed in so far as the benefit in respect of appropriate information, is deemed to outweigh the burthen of the expense. Call it moreover the *receptacle-employing*, or for shortness the *receptacular*, or otherwise the *mimetic* mode: *receptacle-employing*, because, in making the entries, indication is given of the *fixed receptacle*, say *yard* or *building:* and, in the case of the *building*, the interior sub-receptacles, one within another,—say apartment, closet, platform, shelf, chest of drawers, and drawer, *into* which the article is *received*, and out of which it is *issued: mimetic*, because, for this purpose, *draughts*, or say *diagrams*, are employed, exhibiting to view so many *representations*, or say *images in outline*, of the outermost fixed receptacle, as above, with the several interior fixed receptacles and sub-receptacles, down to the innermost, contained in it: *fixed*, in contradistinction to any such *packages* as it is enclosed in, while in its passage to or from, or while in, the official warehouse. Use,—presenting at all times, and to any number of persons at once, in any number of different places at once, a more adequate conception of the state of the moveable stock in all its parts, than could otherwise be obtained.

Ratiocinative.

Art. 8. *Usefulness* of this auxiliary mode of registration. Proportioned to the quantity, variety, and frequency of *entrance* and *exit*, on the part of the aggregate of the articles composing the species of stock here in question,—will, to each directing functionary, be the importance of his having at all times in his mind a conception, and to that end before his eyes a display,—of the quantity he has need of, and of the correspondent supply he has at hand or at command. The things themselves no such functionary can have always before his eyes: still less can the whole number of such other persons, by whom it would be of use that such information should be possessed. But, of the receptacles, in which, at each given point of time, the articles are respectively stowed,—every such functionary, whose business has need of it, may at all times have before his eyes an appropriate imitative substitute,—superficial or solid, draught or model: and, by reference therein made to the original, a conception of the quantity and situation of the thing therein contained: a conception, in some cases even more prompt, correct, and adequate, than the things themselves, if present to him, could furnish him with.

Expositive. Exemplificational.

Art. 9. Sub-departments, in which the benefit of this mode of manifestation presents itself as being most likely to outweigh the burthen. Examples.

I. *Army Sub-department.* Species of stock.

1. Cannon. 2. Mortars. 3. Cannon-balls. 4. Bombs: these four in open areas: Balls and bombs, in piles, in each a determinate number.

5. Firelocks. 6. Pistols. 7. Lances. 8. Swords: these, in appropriate fixed receptacles, with or without the intervention of moveable ones, in which they are stowed: in each a determinate number as above.

9. Gunpowder. 10. Provisions. 11. Drinks: these by the barrel, or other moveable receptacle, number in each receptacle always determinate.

12. Clothing: in each moveable receptacle, sort of article one: number of that sort, determinate as above.

II. *Navy Sub-department.* The like as to the several component parts, inflexible and flexible, of the vessel and rigging, that are in use to be kept, a number of each sort in the same fixed receptacle: for example, masts, yards, sails, cordage.

So, at each port, number, of each rate, each day in the port, with mention of arrivals and departures.

III. *Health Sub-department.* At the Head Dispensary in the Metropolis,—stock in hand, of the several elementary matters, of which the medicines, in the state in which they are administered, are composed. Examples—

(1.) Mineral substances:—as, 1. Mercury. 2. Antimony. 3. Zinc.

(2.) Vegetable substances in natural state:—as, 1, Seeds. 2. Barks. 3. Roots. 4. Gums. 5. Resins, and gum-resins of various sorts.

(3.) Animal substances:—as, 1, Vaccine matter. 2. Living leeches.

(4.) Products of chemical analysis:—as, 1, Acids in a liquid state. 2. Alkalis. 3. Salts in a crystallized state. 4. Oils, expressed and essential.

In each fixed receptacle, moveable receptacle, and sub-receptacle, if any,—quantity always determinate, to wit, in number or by weight, as the case may be.

Instructional. Exemplificational.

ART. 10. Present usage—progress made by it towards this mode of registration. Of the exterior receptacles in question, to wit, *Areas* and *Buildings*, in the business of some of the Sub-departments, draughts are in common use, models not altogether unexampled. Not so, of those inmost and other interior fixed receptacles, in which,—whether unpacked, or in their several appropriate packages, or say *moveable* receptacles, packed,—the several moveable articles of the stock are lodged.

In present practice, to the business of very few of the whole number of the here-proposed Sub-departments, does even the first-mentioned usage extend itself: in no instance, perhaps, does it go beyond the *area* or *exterior building:* in no instance does it extend to the Sub-offices of the Sub-department in question, or to any offices belonging to any other Sub-department: to no such Office, how intimate soever the connexion between Sub-department and Sub-department, and how dependent soever for its success the business of one Sub-department may be, on information, respecting the stock possessed by this or that other.

Instructional. Ratiocinative.

ART. 11. In the here-proposed mode,—by the extension of the *imitative* mode, in each instance, to the inmost fixed receptacle,—the places, in which, in their several sorts and quantities, the moveable articles of stock are lodged, are at all times presented to view in that same more vividly and promptly expressive mode; while, to the information thus afforded, any degree of extent which the business is deemed to require, may be given by the *manifold* system in this as in all other cases.

Instructional. Ratiocinative.

ART. 12. Thus far as to *original disposition:* now as to *changes*. In present practice,—of the *changes* continually taking place in the quantity of the articles stowed in each building or apartment, no otherwise than by verbal description is any conception ever conveyed: in the here-proposed *receptacular* mode, all such changes may, at all times, receive immediate exhibition and communication, as per Art. 7.

Instructional.

ART. 13. Sub-departments, to the business of which this same auxiliary mode of registration and continual intercommunication is most obviously assistant. Examples—

1. Army Sub-department.
2. Navy Sub-department.
3. Ordnance Bis-sub-department, respectively included in those Sub-departments.
4. Finance Sub-department: to wit, on the occasion of the demands made on it by the above-mentioned Sub-departments.
5. Health Sub-department: to wit, in respect of the Medical Stock, Surgical Apparatus included.

Instructional. Ratiocinative.

ART. 14. Moreover, to every Sub-department will belong a continually increasing stock of *written instruments*, styled in one word *papers:* and, in relation to these papers, in each Sub-department, to the Minister, seated in his Head-office, there will be a convenience, in possessing, at all times, by means of the here-proposed mode of indication, the most perfect conception possible of the aggregate mass of these documents in the several Suboffices under his direction.

Instructional.

ART. 15. Mode of adapting this *receptacular* mode of registration to the two distinguishable cases, to which, as above, it presents itself as applicable.

Case 1. By its bulk, the article not exposed to ordinary theft, and by its nature little exposed to spontaneous deterioration by weather. Receptacle, in this case, no other than an open *area*, or say *Yard*. Articles thus stowed. Examples—

1. Navigable vessels.
2. Timber: in readiness to be employed in the construction, either of navigable vessels or edifices.
3. Stones and bricks, for edifices and groundworks.
4. Cannon, cannon balls; mortars and bombs.

Instructional.

ART. 16. Modes of adapting, to the purpose of appropriate delineation, the draught of a *yard* thus employed. The plan being delineated in the ordinary mode, divide the whole surface into squares of the same size. As often as any article or aggregate of articles is received into the yard,—when entry of such receipt is made in the Journal Book, show on the draught, the squares in which the article is deposited: so, on issuing, the squares left vacant.*

Instructional.

ART. 17. By any one of a variety of devices,—the changes made in the *stock* of the yard, might, as soon as made, be represented, in such manner as to be intelligible without the help of words; as in a map, the portions of territory are by lines and colours. The dif-

* Some forty or fifty years ago, a map of Paris was on sale,—in which, to enable a person to find the street or other place he wanted,—the name of the places being inserted in alphabetical order, one under another, in the margin,—the whole area was in this way divided into parallelograms: an instant or two sufficed for applying it to use. Recently, no such map was found obtainable: in lieu of it was to be found one in which the compartments were so few and consequently so large, that to a pair of weak eyes it was found nearly useless.

ference is—that whereas in a map the picture is always the same, in the appropriate draught it will be frequently varied and continually variable.

In the draught, the *squares* will be left in blank: the *boundary lines* alone expressed. For the purpose of the registrative operation, provide,—for the covering of each such square or aggregate of squares, a piece of card, of a size exactly to cover it: each card, with a pin in the centre, to lift it on and off by. On each card, the sort of article, it is destined to express, is expressed by its *image:* and, to the several different images may moreover be allotted so many different *colours*. In this way, for example, may be distinguished from each other—Cannon, Cannon Balls, Mortars, and Bombs: different calibres, expressed by figures, exhibiting in the usual mode the weight or diameter of the missiles.

In this way, a deficiency or redundancy would be manifested in a more impressive manner than by words; thus affording a correspondently greater probability of a timely remedy.

In the margin of the draught, the change will be registered by verbal description, as in the ordinary mode.

Instructional.

Art. 18. Case 2. The sort of article requiring an enclosed exterior fixed receptacle, such as a warehouse, with or without interior subreceptacles, one within another: for example, apartments, closets, piles of shelves, chests of drawers, fixed boxes, or platforms.

In this case, the plans and elevations in the ordinary mode serve for the exterior of the building with its several apartments, and for the closets, if any, within the several apartments. For exhibition of the above-mentioned innermost receptacles, ulterior and appropriate sections and elevations will in this case require to be added.

In the draught, in each such receptacle, if large enough, the *name* of the sort of article for the reception of which it is destined, may be expressed in the appropriate compartment, as above: if not large enough, instead of the name the figure or figures expressive of a number: in the margin will in this case be given the *name*, with that same number prefixed to it. Images and colours may be employed in this case as in the others, as above.

Instructional. Enactive.

Art. 19. Note, that on every change made, in the number, dimensions, or mode of partition of the several *interior fixed receptacles*—platforms, shelves, drawers, &c.—a fresh draught will require to be made, to wit, in the *manifold* mode: exemplars transmitted, in this as in other cases.

Instructional.

Art. 20. Things not capable of being stowed, but in *moveable* receptacles, in which they may be conveyed to, deposited in, and conveyed from, the *fixed* receptacles. To the reception of these same moveable receptacles will the several inmost fixed receptacles be to be adapted. Examples—

1. Drinks, and other matters in a liquid state.
2. Provisions and other matters, in a solid state, stowed with liquids, for preservation and conveyance.
3. Matter in the shape of grain, or powder.
4. Articles, natural or artificial, so circumstanced, as to be usually stowed and indicated in an aggregated way, by number, weight, or measure: as gun-flints, nails, belts, locks and keys, &c.
5. Piece goods of all sorts.
6. Medicines and most of the ingredients employed in the composition of medicines.

Instructional.

Art. 21. Particular case, in which this receptacular mode of registration, as applied to articles kept in warehouses, may perhaps be employed to advantage. Example—

For all the offices belonging to all the several Sub-departments, materials of *writing* and *delineation*, as well in the ordinary mode as in the manifold mode, will at all times be needed: exceptions excepted, a stock for use, whether procured by *fabrication* or *purchase*, will need to be kept in a *central office*, naturally under the direction of the Finance Minister: exception may be—where, by reason of vicinity to the several places of manufacture, the expense of conveyance from them to the central office, and from the central office to the several offices in which supply is needed, may in part be saved: the article being conveyed from the place of manufacture to the office where the need is, without passing through the *central* office.

Instructional.

Art. 22. Materials requiring Registration in the mode in question in this case. Examples—

(1.) For ordinary writing,—paper, pens, and ink.

(2.) For manifold writing,—1, appropriate paper; 2, appropriate silk; 3, appropriate oil; 4, lamp-black.*

Instructional.

Art. 23. In the case of the Health Sub-de-

* In English practice, under the name of the *Paper Office*, an appropriate office is, or at least has been, kept on foot, for the supply of that article to the several Government Offices: should the maintenance of such an office be found to be in England disadvantageous in point of economy, in comparison with *purchase* made at each office from the nearest manufactory, of the stock requisite for that same office,—it follows not but that it might be advantageous in the case of this or that other State.

partment may be seen a sort of stock, which at the same time exhibits the greatest variety and nicety, as to the manner of stowage, and requires the greatest care to obviate natural deterioration.

Ratiocinative.

ART. 24. Uses of the receptacular mode of notification particularized.—

1. Facility given, to the application of the articles, on each occasion, with the maximum of *promptitude*, to their respective uses: *function* aided, the *applicative*.

2. Like facility to the minimization of *expense* and *loss* in respect of them: *function* aided, the *custoditive*.

3. In accordance with, and in proportion to, *consumption*, and other modes of *serviceable elimination*, with the assistance of the *Journal Books*,—facility given to the keeping up at all times the stock requisite for present and future use, without deficiency or excess: function aided, the *procurative*.

Instructional.

ART. 25. Precautionary rule, as to *stowage* of articles sent to a distance: to wit, whether by land or sea, more especially if by sea.—When articles of two or more sorts are so connected, that those of the one cannot be put to use without those of the other, send an assortment of each by the same conveyance: thus, if one conveyance miscarries, those which go by another will, in proportion to their quantity, not be the less serviceable. Send not the whole stock of one sort by one conveyance, of another by another: for thus, if one conveyance miscarries, the consequence is—the whole of the stock sent by both conveyances is found unserviceable.*

Instructional.

ART. 26. General heads, under one or other of which, for aid of conception, every article,—belonging to the aggregate of the moveable stock belonging to all the Subdepartments taken together, and to several of them taken singly,—may be found included—

I. *Articles in a state fit for use.* Examples—

1. *Furniture* of the several official residences. Articles of this description will of course have been bought, not home-made.

2. Provisions of all sorts, liquors for drink, gunpowder, ready-prepared medicines; other articles, put to use by appropriate consumption in the *rapid*, or say *immediate* mode: Subdepartments, those of the Army, Navy, and Health Ministers.

3. Clothing, sails, cordage of navigable vessels, and the vessels themselves—put to use by consumption in the *gradual* mode. Subdepartments, those of the Army and Navy Ministers.

II. *Materials.* Examples—

1. Corn, and other seeds employed, when in a manufactured state, as food.

2. Materials of gunpowder.

3. Drugs, employed in the composition of medicines.

4. Paper, and other wares employed in writing.

III. *Instruments*, employed in work: in bringing the *materials* into a state fit for use. Examples—

1. Machines, of various sorts.

2. Carpenter's, joiner's, and turner's tools, of various sorts.

3. Blacksmith's and whitesmith's tools, of various sorts.

IV. *Vehicles.* Examples—Those employed in the conveyance of any part of the *personal* stock, or of the *moveable* real stock: in particular those belonging to the Letter Post establishment.

V. *Beasts* employed in conveyance as above.

VI. Works in hand: or say, articles of the above or any other sorts as yet unfinished, but in a state of preparation.

The particulars will be indefinitely variable, according to the modes of *procurement* respectively employed: to wit, sale, hire, or fabrication.

Instructional. Enactive. Expositive.

ART. 27. Original Outset Book continued—

IV. Specific Book the fourth, *Money Stock Book.* Heads of Entry. Examples—

1. Stock *actually* in hand in the office, distinguishing between metallic and paper: and as to metallic, between gold and silver.

2. Stock supposed *virtually* in hand: to wit, in other and what offices.

3. Stock in *expectancy:* Distinguishing *whence:* whether from the same or another Subdepartment or Department, or from a non-functionary.

In general, it will be from the Finance Minister, under direction from the Prime Minister and Legislature.

Instructional. Enactive. Expositive.

ART. 28. Expectation, from a non-functionary. Heads. Examples—

1. From whom. His *description.* For heads, see above, Art. 1.

2. On whose account—*his* or what other's.

3. Ground of expectation; whether debt due to the office, or what other ground.

4. If debt, day when due.

5. If not on *that*, on what other day or days *expected*.

6. *Causes* of the uncertainty—if any determinate.

* In the course of the revolutionary war, under English Government management, instances occurred of this oversight. Instances stated to the author by an official authority, under whose cognizance they had just fallen, these,—cannon in one vessel, balls in another, powder in a third: disasters, known at the time, had been the consequence.

Instructional. Enactive. Expositive.

Art. 29. Issues in *expectancy*. *Sub-heads* of entry.

1. Demand, *on whose account* expected—a functionary's or a non-functionary's.
2. Ground of demand,—debt, or what other.
3. Day, when *due*, or *expected* to be received.
4. Day or days, if different, when proposed to be transmitted from the office.
5. Causes of the uncertainty and retardation.

Enactive. Expositive. Ratiocinative.

Art. 30. Where it is by a sub-office that the money is to be transmitted,—in that sub-office, correspondent entries will be made: thus, each will behold a check to it in the other.

BIS-SECTION THE THIRD. JOURNAL BOOKS.

Expositive.

Art. 1. So much for the day of *Outset*. Now as to all *interior occurrences subsequent* to that day:—occurrences, which, in the office in question,—in relation to persons at large, or to persons belonging to any office in the Subdepartment, or any other Subdepartment or Department,—shall come to have taken place on the several succeeding days.

Expositive.

Art. 2. In relation to these occurrences, relative *periods*, or say *portions of time*,—requiring distinct mention, as being occupied by so many different operations and correspondent sets of *occurrences*,—are the following—

1. Time of entrance: to wit, of the moveable article in question into the mass of stock contained in the fixed receptacle in question.
2. Time of continuance therein.
3. Time of exit.

Expositive.

Art. 3. Correspondent to *entrance* is *receipt*: entrance, the operation, performed—as it were, by the *article*: *receipt*, the operation performed—*literally*, by some appropriate functionary; *figuratively*, by the receptacle and the aggregate mass of stock contained in it.

Instructional.

Art. 4. Contemporaneous with *continuance*—to wit, on the part of the article of stock—*ought* to be as extensively as may be, and is accordingly of course *supposed* to be—on the part of the directing functionary, *application to use*: application to the most *appropriate* use.

Expositive.

Art. 5. Correspondent to *exit* is an occurrence, which, relation had to the article of stock, demands different appellatives, according to the nature of the article.

Case 1. Stock, *personal*: appellative, *elimination*: to wit, from the office in question. Modes of elimination, as per section 4, *Functions in all*, four: to wit, 1. promotion; 2. transference; 3. degradation; 4. dislocation.

Case 2. Stock, *immoveable*: appellative, *alienation*, or say *expropriation*. Modes of alienation, if perpetual and indefeasible, *sale* or *donation*: if temporary, *lease-letting*.

Case 3. Stock, *moveable*: appellative, *issue*: or say here again *elimination*.

Case 4. Stock, *money*: appellative, *issue*: modes of issue in this case—

1. Payment; to wit, on purchase, or extinction of debt.
2. Transference to some other office.
3. Donation.
4. Loan.
5. Exchange: to wit, for *money* of some other *species*.

Enactive. Expositive.

Art. 6. In the Journal, as in the Outset Book, *Specific Books* will be,—the *Personal*, *Immoveable*, *Moveable*, and *Money Stock* Books.

Enactive. Expositive.

Art. 7. In the Journal, comprised in each Specific Book will be three Sub-specific Books: to wit.

1. The *Entrance Book*, or say *Receipt Book*.
2. The *Application Book*.
3. The *Exit Book*, or say *Issue Book*.

Enactive.

Art. 8. Journal Books. Specific Book the first. I. *Personal Stock Book*, or say *Individual Service Book*.

I. Subspecific Book the first. *Entrance Book*, Heads of Entry, in relation to each functionary—

1. Day of location, as per year, month, and week.
2. For other heads, see Bis-section IV. Art. 1.

Enactive.

Art. 9. II. Subspecific Book the second. *Application Book*. Heads of Entry.

1. Day, on which attendance, being due, is paid.
2. Hour of Entrance.
3. Hour of Departure.
4. Place or places of service.
5. Subject-matter, or subject-matters of service.
6. Where the nature of it admits, particulars and estimated value of work done.
7. In case of non-attendance *absolute*, appropriate mention thereof.
8. So, in case of non-attendance at the proper place, or on the proper service.
9. Excuse, if any, what.
10. Evidence, if requisite, as to the truth of the excuse, what.

Enactive.

Art. 10. III. Subspecific Book the third. *Exit Book*, Heads of Entry.

1. Mode of exit: to wit, 1. promotion; 2. transference; 3. degradation; 4. resignation; 5. suspension; or 6. dislocation.

2. *Causes* of the exit: to wit, according to the mode in which, as above, it took place.

Ratiocinative.

ART. 11. Uses of these Books, in relation to this species of stock.

1. Securing attendance, thence service.

2. Securing the public against loss of the service and pay.

3. Securing the public against inaptitude, in respect of the service allotted.

4. —— against inaptitude in performance.

5. Securing responsibility on the part of the superordinate.

6. Securing the functionary in question against non-receipt of the pay due.

7. Securing the public against embezzlement of the pay, by the functionary, by whom it should have been paid to the functionary in question.

8. Affording indication as to the general value of the functionary's service,—with a view to promotion, transference, degradation, or dislocation.

9. By reference to the Money Journal, as below, indicating the comparative value of his service compared with ditto of pay.

10. Indicating the different value, if any, on different days.

11. As to alleged places of attendance, indicating truth or falsity, by evidence of others, alleged to have attended at the same time and place.

12. Affording indication, as to whether he could be better employed in any other *service*, or at any other *place*.

Ratiocinative.

ART. 12. Not accompanied with any preponderant hardship is the obligation of furnishing and seeing furnished the evidence elicited under the above heads, and furnished by the entries.

1. If one party is charged and thereby burthened, another is discharged and thereby benefited.

2. Only in case of delinquency does the burthen attach.

3. The burthen imposed by the exaction of service in the shape in question—to wit, giving of evidence—is no other than in *judicial* practice, is as often as occasion calls, imposed on all persons without distinction: in that case, without consent or equivalent: in the present case, with consent and equivalent—to wit, official remuneration.

Instructional.

ART. 13. Degrees of facility as to estimation of value of service of different functionaries; thence, of loss, by want of ditto. Examples—

I. *Maximum* of facility.

1. Copying-clerk's service.

2. Next, Directive or Inspective functionary's service.

3. Next, purely mental labour, unaccompanied with corporal, and employed in formation of some utensil. Examples.

1. Ship.

2. Engine.

3. Surgical instruments.

4. Article of furniture.

II. *Minimum* of facility.

1. Purely mental labour in various cases, in which no result in a physical shape can, in an immediate way, be produced by it.

Instructional.

ART. 14. Journal continued. Specific Book the second. *Immoveable Stock Book.*

I. Sub-specific Book the first. *Entrance Book.* This book will not have place except in the case where, for the use of the Subdepartment, in addition to the *immoveable* stock as entered in the original Outset Book, acquisition of an article or articles of stock in this shape has happened to have been made: as to which case, see below, Art. 17.

Enactive.

ART. 15. II. Subspecific Book the second. *Application Book.* Heads of Entry—Examples—

I. *Application to service, or say profit.*

1. Uses made of the whole, and, if different, of the several parts.

2. Day of each use.

3. Persons employed on each day, in or about the land and buildings respectively.

4. Keeper or keepers, having in charge the whole or the several parts, at the several times. *Function* the *custoditive.*

II. *Application belonging to the head of Loss.*

1. Repairs, if any—days of commencement, continuance, completion.

2. Causes by which the need of the repairs was produced.

3. Costs, as per pre-estimate—Estimator or Estimators, who.

4. Costs, as per experience.

N.B. These four entries belong also to the Loss Book, which see.

5. Inspection made, if any, from time to time, with a view to repair and estimate. Inspector or Inspectors who, and on what days: —their Report or Reports, on what day or days delivered.

Enactive.

ART. 16. III. Subspecific Book the third. *Exit Book.* In case of Exit, Heads of Entry. Examples—

1. Mode of exit—to whom alienated or lease-let.

2. Cause of exit: to wit, according to the mode in which, as above, the exit took place.

Enactive.

ART. 17. On the occasion of any *addition* to

the Immoveable Stock, Heads of Entry. Examples—

I. For those relative to the state at the time of acquisition, see the original Outset Book. *Bissection* II.

II. Additional Heads of Entry, in case of acquisition by *Fabrication*. Examples—

1. Cost of building—of the *whole*, if built for the service, in all its particulars: so, of the several *parts*, if built at several times.

2. Functionary, by whose *direction* the building was *undertaken:* functions, the *directive* and *fabricative*.

3. Day or days, on which the building or buildings were respectively *commenced*.

4. Day or days, on which the building or buildings were, as per Report, respectively *complete*. Reporter or Reporters, who.

5. Day or days, on which the building or buildings were, as per Report, respectively *fit for use*. Reporter or Reporters, who.

6. Antecedently expected cost in each case, as per pre-estimate. Estimator or Estimators, who.

III. Additional Heads of Entry, in case of acquisition by PURCHASE. Examples—

1. Cost and terms of purchase, in all particulars.

2. Purchase money, day or days of payment.

3. Of whom purchased.

4. Original estimate, on the ground of which, on behalf of the service, the purchase was made. Estimator or Estimators, who.

5. Directing functionary, at whose recommendation the purchase was made, who.

IV. Additional Heads of Entry in case of acquisition by HIRE. Examples—

1. Terms of hire, in their several particulars, as per *contract*.

2. Of whom hired.

3. Original estimate, on which, on behalf of the service, the contract was made. Estimator or Estimators, who.

4. Functionary, by whose direction the contract was entered into, who.

5. State in respect of *repair*, as per *Report*, on behalf of the service. Reporter or Reporters, who.

6. As to *repairs*, if any, *during the lease*, for heads of entry, see above, in the case of an immoveable, belonging to the outset stock, as per Original Outset Book, Bissection II., Art. 4, page 236.

7. On the expiration of the time for which the hire was made, mention of the surrender or renewal, and on what terms. Person or persons who, on whose report the surrender or renewal was grounded.

Expositive. Enactive.

ART. 18. Journal continued. Specific Book the third. *Moveable Stock Book.*

I. Sub-specific Book the first. *Receipt Specific Book;* for heads of Entry, see in the Outset Book, Subspecific Book the third. *Moveable Stock Book*, page 237. Follow those peculiar to the *Journal*. Examples—

1. Day of receipt, viz. day of year, month, and week.

2. Name, of the subject-matter received.

3. Quantity.

4. Quality, if variable and ascertainable.

5. Moveable receptacles, or say *packages*, if any, in which received. Wood, glass, paper, &c.

6. Delivered, by whom.

7. Received, by whom.

8. Source, whence.

9. 1. If fabrication, from whose custody.

10. 2. If purchase, from whom.

11. 3. If hire, from whom.

12. 4. If transreception, from what office.

13. 5. So, if retroacception.

14. 6. If *ex-dono-acception*, from whom.

15. In what area, edifice, apartment, and fixed interior receptacle deposited.

16. In case of subsequent inspection by an appropriate functionary,—his names, official and proper, with his signature.

17. So, of every other person present.

Expositive.

II. Sub-specific Book the second. *Application Book.*

ART. 19. The *period* being that of the *continuance* of the moveable article in question in the employ of the office in question, the *function* exercised by the functionaries in question, in relation to the article during that period, is the *applicative*.

For an all-comprehensive conception, of the *modes* in which application is capable of being made of any article of this class, note the distinction between two modes, to wit, the *principal* and the *subsidiary* or say *instrumental: principal*, the *mode* employed, where the article is *not* considered as being of a nature to be employed in the composition of other articles, or in the putting them to use: *subsidiary*, or say *instrumental*, where it *is* considered as being of a nature so to be employed: for example, materials, machines, tools, and other instruments; vehicles, employed in conveyance of these same materials and instruments; beasts employed in like conveyance, or in giving motion to machinery; receptacles, fixed and moveable, employed in giving stowage to the several above-mentioned, or any other, component parts of the aggregate of the moveable stock belonging to the office. See Bissection the fourth, Art. 16, in which these same articles are considered as subject-matters or sources of *loss*.

With the exception of *materials*, as above, —these same subsidiary articles, being applied or applicable, employed or employable, on any and *every* day, the application made of them will not, generally speaking, need to be registered on any day in particular.

Expositive.

ART. 20. Where the mode of application is

the *principal* mode, the subject-matter may be brought into use, either 1, singly, or 2, conjunctively with others: forming therewith a composite subject-matter, of which they are the component elements.

1. Where, by the operations employed in the fabrication, the article is rendered capable of being applied to use,—without being, in conjunction with articles of a different sort, formed into a compound body,—call the mode of application and fabrication *transformative:* as in the case of iron or brass formed into cannon, mortars, balls, or bombs: where it is brought into use in conjunction with others,—forming therewith, as above, a compound, or say a complex body,—call the mode of application and fabrication *conjunctive:* when conjunctive, the mode will be either 1. by simple *apposition*, as in the case of the elementary parts of the carriage of a cannon or mortar: or 2. by *mixture*, as in the case of the elementary ingredients of the gunpowder. In some cases, in the formation of the thing for use,—materials, which enter not into the composition of it, are employed by being consumed. Example, *fuel:* in particular, when employed in *fusion* or *refusion*.

Enactive. Expositive.

ART. 21. Of the stages of the PROGRESS, to wit, of the progress made in the course of *formation*, the description will, of course, depend upon the nature of the *article formed*. But, be it what it will, among the HEADS OF ENTRY applicable to it will be the following—

1. Elementary subject-matters, what.
2. Days, on which they are respectively delivered into the custody of the person or persons employed in the work: as to whom, see above, the Original Outset Book, Specific Book the first, Personal Stock Book.
3. Their names, quantities, and qualities.
4. By whom respectively delivered,
5. Persons who, employed in the work.
6. Each day, progress made in the work.
7. Persons, if any, ceasing, and when, to be employed in the work, and in what capacities.
8. In case of unexpected retardation and delay,—mention of the *causes*, and of the persons concerned in the producing of it.

Instructional.

ART. 22. By these entries, with the addition of the mention made of the *apartments* in which the work is carrying on,—the superordinate functionaries will at all times be enabled to follow in mind each article, formed, as above, throughout the whole course of its progress.

Enactive. Expositive.

ART. 23. III. Subspecific Book the third. *Issue Book.* Heads of Entry.

1. Day of issue; to wit, day of year, month, and week.
2. Name of the subject-matter issued.
3. Quantity.
4. Quality, if variable and ascertainable.
5. Moveable receptacles, or say *packages*, if any, in which packed when issued.
6. Delivered out, by whom.
7. Delivered, on what account.

Instructional.

ART. 24. Note, that of transmission from fixed receptacle to fixed receptacle, though in the same apartment and in the same person's custody, mention may require to be made, lest the Superordinate's conception, as deduced from the *imitative sketches*, or say *diagrams*, should be erroneous.

Enactive.

ART. 25. Journal continued. Specific Book the fourth. *Money Book.*

I. Sub-specific Book the first. *Receipt Book.* Heads of Entry—

1. Day; to wit, day of year, month, and week.
2. Money in hand.

I. Receipts, as per *expectation*. Heads of Entry in relation thereto.

1. On what account received.
2. From whom received.
3. By whom delivered.
4. By whom received.

II. Appendage to the *Receipts*.

(1.) *Non-receipts:* that is to say, sums which, though the receipt of them was expected for that day, were not received accordingly. (See below, Bissection 4. Loss Book. Art. 4. Heads of Entry here—

1. Day, when the money should have been received.
2. On what account, it should have been received.
3. From whom.
4. Causes of non-receipt, to wit, blameless misfortune or misconduct: as ascertained, sumed, or conjectured.
5. If misfortune, how: if misconduct, by whom, and in what shape.

(2.) *Unexpected Receipts:* Sums, if any, unexpectedly received, with like entries, as above in the case where *expectedly* received.

Enactive.

ART. 26. II. Subspecific Book the second. *Application Book*, none: other than the *Issue Book*, which see.

Enactive. Expositive.

ART. 27. III. Sub-specific Book the third. *Issue Book.* Heads of Entry—

1. Days of issue.
2. Sums issued, as per expectation.
3. On whose account delivered.
4. To whom delivered.
5. By whom delivered.
6. Sums issued in compliance with *unexpected* demand.

Enactive. Expositive.

ART. 28. Appendage to the *Issues*. (1.) *Non-issues*, or say *Expected demands not fulfilled*. Heads of Entry—

1. Day, when the demand should have been fulfilled and issue made.

2. On what account the money should have been issued.

3. To whom it should have been issued.

4. Causes of non-issue, blameless accident or misconduct, as ascertained, presumed, or conjectured.

5. If misfortune, how: if misconduct, by whom, and in what shape.

(2.) *Unexpected demands fulfilled.* Heads of Entry—

1. On what account or ground made.

2. By whom made.

3. Causes of non-expectation.

(3.) Unexpected demands not fulfilled. Heads of Entry, the same.

Instructional.

Art. 29. Note, that these same heads of entry relative to non-receipts, demands unexpected, and issues unexpected, might, on occasion, be applied to *moveables*, as well as *money*.

Instructional. Expositive. Exemplificational.

Art. 30. Journal continued. Specific Book *the fifth. Exterior Occurrence Book.* Subdepartments, to the business of which, receipt and registration of evidence of exterior occurrences will be more particularly apt to be needful. Examples—

1. *Army* Subdepartment. Time, war-time. Examples—1. Occurrence, war-engagement: result, favourable or unfavourable.

2. Occurrence, arrival or miscarriage of a convoy.

2. *Navy* Subdepartment. Time and occurrences, as above.

3. *Preventive Service* Subdepartment. Occurrence, arrival of a calamity or commotion. For examples of calamities, see Ch. xi. Ministers severally. Section 5, *Preventive Service Minister.*

4. *Health* Subdepartment. Occurrence, breaking out or importation of a disease regarded as contagious.

5. *Foreign Relation* Subdepartment. Occurrence, symptoms observed of hostility on the part of a Foreign State.

6. *Trade* Subdepartment: to wit, in respect of states of things and events regarded as presenting a demand for fresh regulations relative to the manner of carrying on trade, or as obstructing or facilitating the giving execution and effect to existing regulations.

Instructional. Expositive. Exemplificational.

Art. 31. Heads of Entry. Examples as to occurrences.

1. Place of the occurrence: description as particular as may be.

2. Time of the occurrence: description as particular as may be.

3. Time,—to wit, *day*, and in some cases *hour*,—of the receipt of the information of the occurrence, at the Office by which it is recorded.

4. Name and description of the person or persons, by whom the information is delivered at the Office: distinguishing whether by personal appearance and oral discourse, or by epistolary discourse.

5. Nature of the evidence by which the fact of the occurrence is more or less probabilized.

Instructional. Enactive.

Art. 32. With a solicitude proportioned to the importance of the occurrence,—on the receipt of the information at the Office, it will be the endeavour of the directing functionary to trace it up to its *sources*,—i. e. to trace each alleged fact up to the person or persons, who, in relation thereto, are stated as having, by means of any one or more of the five senses, been *percipient* witnesses. For the mode of making this investigation, see Ch. vi. Legislative. Section 27, *Legislation Inquiry Judicatory:* and *Procedure Code*,—title, Evidence.

BIS-SECTION THE FOURTH. LOSS BOOKS.

Instructional. Expositive.

Art. 1. Loss, considered as liable to befall the service of a Subdepartment, may be considered as receiving division from two sources: to wit, the *subject-matter* and the *efficient cause.*

Instructional. Expositive.

Art. 2. Subject-matters, as above, may be—

1. Personal service, or say services of persons.

2. Things immoveable.

3. Things moveable.

4. Money.

Instructional. Expositive.

Art. 3. Efficient causes of the loss may be—

1. Purely *human* agency: to wit, on the part of functionaries or non-functionaries: on the part of functionaries belonging to the Office in question, or on the part of functionaries belonging to other Offices.

2. Purely *natural* agency, as in the case of calamity or casualty: as to the different sorts of calamities, see Ch. xi. Ministers severally. Section 5, *Preventive Service Minister.*

3. *Mixed* agency, or say partly natural, partly human agency: to wit, where the loss has for its efficient cause calamity or casualty, produced or aggravated by misconduct, culpable or criminal, positive or negative, on the part of some person or persons, functionaries or non-functionaries.

Instructional. Expositive. Enactive.

Art 4. I. Subject-matter or source of loss, I. *Personal Service.* Modes of loss. Examples—

1. Non-attendance, or say *absentation, absolute:* the functionary not being attendant or oc-

cupied in any place, on business belonging to his Office.

2. Non-attendance *relative:* attendance and occupation in a place in which his service was not so profitable as it would have been in some other place.

3. Application *uneconomical:* the work, to which his service was applied not so profitable as some other to which it might have been applied.

4. Non-operation, during attendance.

5. Operation *careless* or *rash* during attendance: thence, service not so profitable as it might have been.

Instructional. Expositive. Enactive.

ART. 5. Incontestably proveable are—

1. Non-attendance absolute.
2. Non-attendance relative.
3. Non-operation during attendance.

Not incontestably proveable are—

1. Application uneconomical.
2. Operation careless or rash.

Instructional. Expositive. Enactive.

ART. 6. II. Subject-matter or source of loss, II. a thing *immoveable.* Examples—

I. Land adapted to Husbandry. Modes of loss. Examples—

1. Non-culture.
2. Culture uneconomical.

II. Land covered with Buildings, or employed in Ground-works. Modes of loss. Examples—

1. Non-occupation.
2. Application uneconomical.
3. Deterioration spontaneous, for want of appropriate reparation.
4. Deterioration by positive human agency.
5. By natural causes,—inundation, fire.
6. Mode of reparation uneconomical.

III. Land, the value of which is constituted by application made of portions of its substance, after converting them from their immoveable to a moveable state: as in the case of mines, quarries, chalk-pits, gravel-pits. Modes of Loss. Examples—

1. Non-application.
2. Application uneconomical.

IV. Land in any one of the above conditions.

Appropriate source of profit, self-dispossession temporary, by *lease-letting.* Modes of loss. Examples—

1. Non-lease-letting.
2. Lease-letting gratuitous.
3. Lease-letting at under price.
4. Lease-letting to a Lessee, by whom it is deteriorated.
5. Lease-letting to a non-solvent Lessee.
6. Lease-letting to a Lessee, by whom, at the end of the term, it is not surrendered.

Instructional. Expositive. Enactive.

ART. 7. III. Subject-matter or source of loss, III. a thing *moveable.* Modes of loss. Examples—

1. Non-receipt, in a case in which the article should have been received: with the cause of such non-receipt, whether pure accident or human agency, positive or negative, as in case of deterioration, as per Nos. 4, 5, 6.
2. Non-application.
3. Application uneconomical.
4. Deterioration or destruction spontaneous for want of appropriate custody.
5. Deterioration by positive human agency.
6. Deterioration for want of reparation.
7. Miscollocation: stowage, in a place not conveniently accessible: whence, loss of labour.
8. In case of an article not applicable to use but by consumption, as food, fuel, &c., consumption useless.
9. Consumption excessive.
10. Consumption uneconomical.
11. Loan gratuitous.
12. Loan at under price.
13. Loan to a borrower, by whom it is deteriorated.
14. Loan to a non-solvent borrower.
15. Loan to a borrower, by whom it is not returned.
16. Elimination by accident, without blame to the custodient functionary.
17. Sale at under price.
18. Elimination through negligence or rashness on the part of the custodient functionary.
19. Embezzlement by the custodient functionary.
20. Theft, by another person, functionary or non-functionary.
21. Fraudulent obtainment by do.
22. Peculation: that is to say, from loss in any one of the above or other shapes, profit derived by a directive or custodient functionary.

Instructional.

ART. 8. Note that, in regard to sale, even where *auction* is the mode, the nature of the case keeps open a door to fraud, in two distinguishable shapes.

1. By accident or contrivance, the article, though in comparatively good condition, has been made to wear a deteriorated appearance: to the party meant to be favoured, information as to its true value is given, and at the same time concealed from others: by this means, it is sold to and bought by him at under value.

2. By confederacy with each other, with or without the participation of the functionary in question, divers persons, who otherwise would have been bidding one against another—say for six several articles, these being the only persons who could have bid for them—agree; and thus leave, to each of them, one of the articles, at the under price at which it has been put up.

Instructional.

ART. 9. Subdepartments, the business of which lies exposed to fraud in these shapes. Examples—

1. Navy Department: in respect of sale of *old stores.*

2. Finance Subdepartment: in respect of sale of articles confiscated as contraband.

Instructional.

Art. 10. Against fraud in these shapes, the Members of the Public-Opinion Tribunal will be on the alert, watching the offices belonging to the Subdepartment, in their several grades.

Instructional.

Art. 11. Efficient cause and modes of spontaneous deterioration. Examples—

1. Evaporation.
2. Exsiccation.
3. Humectation.
4. Induration.
5. Emollition.
6. Fermentation,—saccharine, acetous, or putrifactive.
7. Discoloration.

Instructional.

Art. 12. Efficient causes or modes of spontaneous destruction. Examples—

1. Subject-matter vegetable, in a natural state, in large masses. Efficient cause, combustion in consequence of fermentation.

2. Subject-matter vegetable, in a manufactured state, sails or cordage heaped together in a humid state, with or without contiguity to oleaginous matter. Efficient cause, combustion, as above.

3. Subject-matter, mineral with vegetable in a manufactured state, gunpowder. Efficient cause of destruction by explosion, in window glass, a bubble, having the effect of a lens.

Instructional.

Art. 13. Subject-matters, considered in respect of their degrees of natural durability, independently of their application to use. Examples—

I. Articles of *greatest* durability.

1. Precious stones crystallized.
2. Stones (accretions of earths) in general.
3. Metals in general.
4. Shells of shell fish, by naturalists ranked under the head *vermes.*
5. Bones and horns of animals.
6. Alcohol, saline bodies, and other products of chemical analysis, if kept from evaporation and communication with the atmosphere.

II. Articles of *least* natural durability: though, for a greater or lesser length of time, preservable by art. Examples—

1. Flesh of animals.
2. Herbaceous parts of vegetables.

III. Articles of *intermediate* degrees of natural durability. Examples—

1. Wood of ligneous plants.
2. Seeds of plants, as wheat and other grain.
3. Roots, tuberose and bulbose.

Instructional.

Art. 14. Effect of *age* on the value of an article of stock; of age, and thence of the *time* during which it has continued in the service. In most cases, it will thus be *deteriorated*, but in some, it is, or may be *improved.*

Instructional.

Art. 15. As to *persons*, up to a certain age, their value will naturally be increased by experience: beyond a certain age, it may be diminished by weakness.

Instructional.

Art. 16. As to *things.* Of most things, the value regularly decreases by age: but of some, before it decreases, it commonly increases: witness, many fermented liquors. Of quadrupeds below the age of full growth, the value generally increases, up to that age.

Instructional.

Art. 17. Hence, a memento, where the effect of the age is important enough to be worth the trouble:—establish a column, headed, "*when introduced:* with or without another headed *when produced:* to wit, where the time of *production* is known, and the difference between that and the time of *introduction* into the service is considerable.*

Instructional.

Art. 18. Subject-matters, considered as to the length of time, during which the use, made of them respectively, continues. Examples—

I. Articles of quickest consumption.

1. Gunpowder and shot.
2. Combustible matters used for heating and lighting.
3. Matter of food and drink.

II. Articles of slowest consumption.

1. Articles composed of gold, silver, and platina.
2. Articles composed of other metals.
3. Materials employed in building.
4. Materials employed in receptacles for liquids, and for solids, in a state of powder:—glass and earthenware.
5. Materials employed in the composition of the *steadiments*, or say unmoving parts of fixed machinery.
6. Utensils—articles of household furniture, employed as *receptacles* for smaller articles: chests of drawers, bookcases, &c.

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* For an indefinite length of time, in a perfectly closed vessel, by determinate and unvarying degrees of heat, the flesh of animals has been found preservable from the putrefactive, vegetable matter in the soft and moist state from the acetous as well as the putrefactive, fermentation. What other changes they would undergo, and whether any for the better, in greater heat, and for greater length of time, remains for the most part to be tried. Of late, wine has been improved by heat: so, by cold. For heat, the instrument would be steam: for cold, ice.

7. Articles of household furniture used for repose: the ligneous parts—chairs, tables, bedsteads.

8. Artillery.

III. Articles of intermediate quickness of consumption.

1. Articles of household furniture: those composed of the oxydable metals, pure and mixed, as iron, copper, brass, &c.

2. Articles composed of matter in a filamentous state, employed as furniture of ships or houses.

3. Tools, and the *moving* parts of machinery.

4. Beasts employed in conveyance, or in giving motion to machinery.

Instructional.

ART. 19. In the business of each subdepartment, immediate subaggregates—of the aggregate stock of moveables, kept in custody, and applied or waiting to be applied, and as such considered as liable to be subject-matters or sources of loss,—are

1. Articles of work finished for use.

2. Materials for the formation of work, finished for use.

3. Machines, tools, and other instruments, employed in the formation of work finished for use, or in the formation of other instruments so employed.

4. Receptacles, fixed and moveable, of all sorts.

5. Vehicles of all sorts.

6. Beasts, employed in conveyance, or in giving motion to machinery. See Arts. 16, 17, and Bissection the second, Art. 26, page 241.

Instructional. Expositive. Enactive.

ART. 20. IV. Subject-matter or source of loss, IV. *Money*. Modes of loss. Examples—

I. Loss by Disserviceable *procurement*. Modes. Examples—

1. Taxation misseated.

2. Borrowing on terms less advantageous than might have been obtained.

3. Payment or repayment postponed, on terms less advantageous than might have been obtained.

II. Loss by Disserviceable *non-receipts*. Modes. Examples—

1. Non-receipt *definitive*, or say *absolute*, through negligence.

2. Non-receipt *temporary* through negligence: the money not received till after the day on which it might have been, and ought to have been received.

3. Non-receipt, *definitive* or *temporary*, through favour to, but without concert with, a party, from whom it might have been, and ought to have been received.

4. Non-receipt for reward, in concert and by complicity with, a party from whom it might and ought to have been received.

III. Loss by disserviceable *application* or *non-application*.

1. Purchase of personal services, things immoveable, or things moveable, at an over price.

2. Non-purchase of ditto, till after the commencement of the time when needed: thereby, loss of the value of the use, minus the interest of the money.

3. Purchase on credit instead of for ready money: thence loss by the overprice.

4. Omission to employ it in loan, when received in quantity exceeding the demand for purchase.

5. Note, that if exacted in greater quantity than needed, or before needed, the loss falls on the contributors.

6. Non-application definitive, or say *hoarding*.

IV. Loss by *transformation*. Modes. Examples—

1. Transformation uneconomical, by simple refusion: subject-matter of loss, the expense of coinage, and pay for labour employed in calling in the current stock.

2. Transformation uneconomical, and *fraudulent:* to wit, by diminution of quantity, or deterioration of quality by alloy, without correspondent change of denomination.

3. Augmentation uneconomical of the aggregate quantity: to wit, by addition of *paper money*, consisting of promises, to the stock of *actual money*, thereby lowering its value.

V. Loss by disserviceable elimination of money, including expenditure in purchase or supposed purchase of *Personal services*. Modes. Examples—

1. Pay attached to *needless Offices:* offices, in their nature useful, but, by and in proportion to over number, superfluous, and so far useless.

2. Pay attached to *useless* offices: useless in their nature: the labour if any, performed in them, being useless.

3. Pay attached to *sinecure* offices: to an official situation, instituted or continued, on pretence of services rendered, when in fact no labour is performed in respect of them in any shape.

4. *Over-pay*, attached to *needful* offices.

VI. Loss by purchase or hire, of *things*, immoveable or moveable.

1. Purchase or hire of things needless, as above.

2. Purchase or hire of things useless, as above.

3. Expenditure on the pretended purchase or hire of a thing not procured, as above.

4. Expenditure, during an unnecessarily protracted series of years, in the fabrication of a thing not completed for use till the end of the series: at which time it may or may not be needed.

In this case, the loss consists in the loss of the interest of the money, expended in making the several instalments.*

* In former days, in the English Navy Subdepartment, a practice had place, of expending money in this way, in a work which, at the intended rate

Enactive. Ratiocinative.

Art. 21. For prevention of loss,—on receipt of an article, into what custody shall it be delivered? that of some *one* person, or that of persons in any and what number *greater* than one?

Answer. Into the custody of one person and no more.

Reasons. 1. As the number of co-responsibles increases, the effective force and efficiency of the responsibility decreases. As to this, see Section 3, *Number in an Office.*

2. Blame is by each laid to the account of the other.

3. As their number increases,—so, in case of delinquency, the strength of the sinister support, afforded to all by their several connexions.

Instructional. Enactive. Ratiocinative.

Art. 22. But, so as the person responsible is but one, no matter how many others concur *with* him in the operation belonging to custody, so they be assistants chosen by or for him, or by a Depute chosen by him, or a Depute chosen for him.

Instructional. Enactive. Ratiocinative.

Art. 23. So, the greater the number of *subsequently* attesting Inspectors, one after another, the better: since, by their attestation, they are responsible for the existence and condition of the article: responsible, that is to say at the *time* of such their *inspection:* not at any *subsequent time:* for, thereafter, in respect of the existence and condition of the things in question, the responsibility will rest exclusively on the custodient and subsequently inspecting functionaries; on the custodient at all times; on the inspecting, at the time of inspection.

Instructional. Ratiocinative.

Art. 24. Principle of these observations, the *individual responsibility principle.* Corresponding rule.—Of responsibility, in whatever shape, imposed upon a trustee, the efficiency is *diminished* by every *co-trustee* added to him.

Enactive.

Art. 25. In the Loss Book, in every page, in which entry is made of an article of loss, as above,—at the end of the lines will be provided five columns; the first, headed with the words "*Present value in money;*" the second with the word "*Ascertained;*" the third with the word "*Supposed;*" the fourth with the word "*Conjectured;*" and the fifth with the word "*Unconjecturable:*" the day indicated by the word *present*, being the day on which the entry under that head is made.

Enactive. Instructional.

Art. 26. In each of these columns, it will in each office be for the care of the directing functionary to cause to be made, on the occasion of each article of loss, in addition to the sum expressive of the *amount*, or say *money value* of the loss, an entry under that one of the four last heads which, in his judgment, is the proper one: except that,—where it is under the word *unconjecturable* that the entry is made,—the line, in the column headed "*present value in money,*" will of course be blank.

Enactive.

Art. 27. In each Subdepartment, to the directing functionary of each office it will belong, to secure the regular making of the above entries,—by the directing functionary —of the office, if one,—or if more than one, by the several directing functionaries of the several offices, one under another, subordinate to his own.

Enactive.

Art. 28. To the Prime Minister it will belong—to secure the regular making of these same entries, by the care of the Minister in each Subdepartment, as above.

Instructional.

Art. 29. To the several Members of the Public-Opinion Tribunal it will belong—upon occasion, to judge of the propriety and verity, of the indications afforded by the several entries, as above.

Ratiocinative.

Art. 30. The allowance given by the word *unconjecturable* considered,—no obligation of insincerity will in any case be imposed, by the obligation of making entry under some one of the four heads, at the option of the person in question, as above: nor yet, will an entry under that head be without its use: for, when, under that same head, an entry is made,—the propriety and sincerity of it will lie open to the judgment of the several above-mentioned constituted authorities.

Instructional.

Art. 31. Causes or occasions of loss, by *hu-*

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of progress, could not have been completed, or so much as been expected to be completed, earlier than at the end of perhaps half a century. But if, without the work in question, the service could be sufficiently provided for during any such term, so might it thereafter for ever more. Some hundred thousands of pounds was that which, according to a calculation made at the time, would, at the end of the term, have been the amount of the loss: not to speak of the case, in which, by that time, the work might, by any one of a number of contingencies, be rendered useless, the demand being superseded, or being better provided for by other means. Representation to this effect was made, and the calculation exhibited by a functionary, to whose office it belonged: to this representation no regard was paid at the time: whether since, cannot here be stated.

man agency on the part of supreme functionaries. Examples—

I. *Incidental Expenditures.*

1. Expenditure, of persons, things moveable, and money,—in commencement, continuance of, or preparation for, needless *wars*.

2. Expenditure, of ditto, in the purchase, foundation, or maintenance, of *distant dependencies*.

3. Expenditure, of money, on articles, for the accommodation or amusement of the comparatively *opulent few*, at the expense of all, including, in prodigiously greater number, the *unopulent many*, who are incapable of participating in the benefit: productions of the *fine arts*, for instance, and books, the uselessness of which is demonstrated by their rarity. The expense, however, is in this third case but as a drop of water to the ocean, compared with what it is in the two former: and the mischief consists—not so much in the absolute expense as in the preference given to it over *needful* expenses, leaving thereby the *correspondent evils* in a state of continuance and increase,—and in its operation in the character of an instrument of *corruption*, by means of the official situations carved out of it, and in that of an instrument of *delusion*, contributing, by the awe-striking quality of the object,—to beget and maintain a habit of blind and unscrutinizing submission on the part of the subject-many.

II. *Permanent Expenditure.*

4. Expenditure, in the pay attached to needless and sinecure offices, and the overpay attached to useful and needful ones: and note well, on each occasion, the *corruptive* and *delusive* influence, inseparably attached, by the nature of the case, to every particle of such waste.

For the course taken for the minimization of such waste—and, by that in aid of other means, for the maximization of appropriate aptitude,—with reference to the functionaries belonging to each office, see the several ensuing Sections, headed *Remuneration, Locable who, Located how, and Dislocable who.*

Instructional.

ART. 32. *Stock-in-hand Books.* Whatsoever be the *subject-matter*, and the *place*,—the manner of ascertaining, on each day, the quantity of the stock in hand, of each of the above four species of stock, on that day, will be the same.

On the day, next to that on which the original Outset Stock Book and the first Journal Book bore date,—the stock in hand will, in regard to each species of stock, be composed of the stock as per *Original* Outset Book, *adding* the amount of receipts, if any, on the first day, and deducting the amount of issues and losses, if any, on that same day.

If, for the purpose of presenting to view the *balance* of the stock in hand applicable to the service of each day, a set of books were instituted, they might bear the name of *Stock-in-hand Books.* The matter in question being, as above, entered,—the whole of it—in the Journal, the only question will be, as to the copying it, in this form and method, into a separate set of books.

Instructional.

ART. 33. To the *immoveable stock*, unless it be in respect of the moveable stock attached to it, this operation will not have application. Applied to the *personal* stock, and the *money* stock, it is simple, and accordingly attended with little difficulty. Not so in the case of *moveable* stock: unless it be of a sort, the importance of which, with a view to the purposes in question, is sufficient to warrant the time and expense of keeping a separate account of it. In so far as this degree of importance has place—above may be seen the mode.

BIS-SECTION THE FIFTH. SUBSIDIARY BOOKS.

Instructional.

ART. 1. Of books which there may be found a convenience in employing as subsidiary to the above, examples are the following—

V. I. RETROACCEPTION BOOK. Heads of Entry for this Book, names of the Offices from which the several articles have been *received back* after transmission thereto. For Subheads see Bissection 3, Art. 18, *Receipt Book.*

VI. II. RETROTRANSMISSION BOOK. For Heads and Subheads, see above, *Retroacception Book*, and page 245, *Bissection* 3, Art. 23, *Issue Book.*

Instructional.

ART. 2. Other Subsidiary Books a demand may perhaps be found for, created by local or temporary circumstances. To keep on the look-out for such demand will be among the objects of the Legislature's care.

BIS-SECTION THE SIXTH. ABBREVIATIONS.

Instructional.

ART. 1. *Abbreviations.* Antecedently to the organization of the several Subdepartments, or subsequently, on report from the several directing and registering functionaries,—it will be for the consideration of the Legislature, whether, in every Subdepartment, or in any one or more, and which of the Subdepartments,—in the making of the entries, *abbreviations*, in any and what cases, and if in any, in what form and tenor, shall be ordained or allowed.

Ratiocinative. Exemplificational.

ART. 2. Antagonizing consideration for and against the practice. Examples—

1. *For the practice.* Saving of time and

labour of writers: thence of expense to Governments.

2. Saving of time and labour of readers: to wit—

1. Functionaries belonging to the office.

2. So, among suitors, all to whom the abridging characters have become as familiar as the unabridged.

3. In the abbreviations commonly employed in manuscripts before printing had come into use,—saving, in respect of time, labour, and thence expense, employed in writing, was manifestly the advantage, by the contemplation of which the practice was produced: had not such advantage been actually obtained, the practice, it may be thought, would not have continued.*

II. *Against the practice.* Disadvantage to such suitors, in whose instance, in the capacity of readers, more time and labour is consumed by the abridged form than by the unabridged.

Antagonizing advantages—on the part of the *abridged* form, *conciseness;* on the part of the *unabridged* form, *clearness.*

Instructional.

Art. 3. Means of compromise. 1. As to words singly taken.

Rule 1. For the abbreviated form, take not forms altogether unanalagous, such as are the *algebraic*, but fragments of the respective words: to wit, *initial letters*, with or without final or other succeeding ones.

Instructional.

Art. 4. Rule 2. Employ no abbreviated word, without inserting it in an alphabetical list of abbreviated expressions, followed and explained by the corresponding unabbreviated ones: that list being entered, on a page opposite to the page on which the title of the book is entered.

Instructional. Ratiocinative.

Art. 5. Rule 3. So, in regard to *propositions*, and *locutions* composed of *fragments*, or *aggregates*, or aggregates with fragments, of propositions.

Rule 4. In written instruments, addressed to, or designed for the perusal of, individuals at large, who are not in the habit of attendance at the office,—employ not any abbreviations, which are not perfectly familiar to individuals at large.

Rule 5. In the case of the books kept at the offices, employ not any abbreviations, by which, on the part of individuals at large, in their capacity of Members of the Public-Opinion Tribunal, facility and clearness of conceptionl wil be diminished.

Rule 6. Leave not, to functionaries in each or any office, the faculty of employing, at pleasure, abbreviations of their own devising.

Reasons. If *yes*,—1. There might, in this particular, be as many different languages as there are offices.

2. Abbreviations would be liable to be employed for the express purpose, of eluding the scrutiny, and diminishing the tutelary power of the Public-Opinion Tribunal.†

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* As in *writing* and *reading*, more particularly in writing, so in pronunciation. In the corresponding advantage of despatch may be seen the cause of the continually increasing deviations of the pronunciation at each point of time of a great part of the aggregate stock of words, as compared with the pronunciation still indicated by the written characters: for example, in French, at the end of the third person plural of verbs, the omission of the entire syllable *ent*, the sound of which is in other positions so strong and marked.

† In a Subdepartment of the Finance Subdepartment of England—to wit, in an office called that of *Clerk of the Pells*, (*Pells* means *parchments*,) belonging to what is called the *Receipt of the Exchequer*, the money accounts used to be kept, and, it is believed, still continue to be kept, in characters composed of abridgments of Latin words: characters such as were in use before the introduction of the Arabic numerals. In this form, the difficulty attached to the operation of *summing up*, how moderate soever were the number of the items it was applied to, was such as may be left to be imagined. On various occasions, propositions having been made for the discontinuance of it,—to what a degree the functionary, who was the chief if not the sole adept in this mysterious language, clung to it and resisted the discontinuance of it,—may also be left to be imagined.

In some of the Oxford Colleges, at any rate in Queen's College, accounts of the articles of diet, as bespoken and delivered, are, or at least used to be, entered in the like and no other mode: entered by the cooks, the under-cook, and the keeper of the bread and beer. On a certain occasion, complaint, well or ill-grounded, was made of the cooks, as having charged the under-graduate Members for articles never delivered. The defence was true and simple. The books were constantly open to all members. True, but the characters being more repulsive than even algebraical ones, the books might almost as well, to the purpose of the security in question, have been kept closed.

Note, that *arithmetical* expression is throughout but an abridgement of ordinary ditto: *algebraical*, of arithmetical and ordinary mixed.

Note also, that of whatever matter is expressed by arithmetical and algebraical signs, there is not a particle that could not be expressed by the signs employed in ordinary discourse; and note that in this case it would be intelligible, and without effort, to non-mathematical readers at large.

And yet, of that stock of information which has been obtained by the use of those signs,—more especially that most formidable sort, composed of letters of the alphabet,—it seems clear enough, that not more than a comparatively small part could have been obtained without them.

The reason is—that, but for these modes of compression, to such a bulk would the matter have swollen, that, before the result had been obtained, the minds of writers and readers would have been bewildered and put to a stand: the conceptive faculty not being able to grasp, at once, the whole quantity necessary to the obtainment of the result.

Instructional. Ratiocinative.

ART. 6. Securities for correctness and completeness in *entries*. Properties, desirable on the part of each such entry, as per Art. 5, *correctness*, *clearness*, and *comprehensiveness*: on the part of the aggregate of all, comprehensiveness and symmetry. Correspondent errors—opposite to correctness, *false entry*: to wit, either by simple addition of false statements, or substitution of false to true: opposite to completeness, *non-entry*: omission of matter that ought to have been inserted.

In the one shape as well as in the other, the error may have had for its cause either matter foreign to the conduct of the functionary in question, or misconduct on his part: if misconduct, it may have had for its cause a deficiency, either in moral, intellectual, or active aptitude: if in moral, either, 1, evil intention, with correspondent evil-consciousness—the result of misdirected attention: or, 2, *negligence*, or say *carelessness*—the result of want of due attention.

Against misconduct in both these shapes, the direct and appropriate security will be *punishment*, as to which, see the Penal Code.

For securities as well against misconduct through *moral* inaptitude, as above, as against deficiency in respect of appropriate *intellectual* and appropriate *active* aptitude, see in Section 25, *Securities, &c.*, those which apply to the due exercise of this function, together with all others belonging to functionaries in this Department.

SECTION VIII.

Requisitive function.

Expositive.

ART. 1. Necessary to conception of the *function* styled *requisitive*, is that of the *administration* MANDATE, styled a *procuration-mandate*. By a *Procuration* Mandate, understand a written instrument, by which, for the service of the public, certain supplies therein mentioned are ordered to be *procured*.

Enactive.

ART. 2. Exceptions excepted,—for the ser-

Newton could never have been Newton, had he lived in Grecian or Roman days.

By development given to this conception, considerable facility might, it is believed, be given to instruction in this branch. For this purpose a few problems would be to be chosen; and, of the deduction employed in the solution, translations made into the language employed in ordinary discourse; with indication given of the use by which each stage or step in the process was suggested.[a]

Italian Book-keeping Nomenclature.

1. In no book kept in the here-proposed mode, are the words *Debtor* and *Creditor* employed, as in that, as heads.

2. To the mode of expression, in which, by the heads here employed, the information is thus given, belong the properties following—

1. It is *intelligible* to all alike.

2. It conveys not any idea *contrary to truth*:—inconsistent with the idea meant to be expressed.

3. Not so the language in which *Debtor* and *Creditor* are employed.

4. In the mode of expression ordinarily and universally employed, and accordingly here employed, *Debtor* and *Creditor* mean *persons* only: nor do they express other subject-matters, either received or issued, or expected to be received or issued.

In the technical language which has obtained currency among mercantile men, namely, that employed in the *Italian Method of Book-keeping*, *things* are absurdly styled *Debtors* and *Creditors*. Wine, for example, is stated Dr. to Cloth, or Cloth to Wine; and both to *sundries*.

5. These forms of expression are misrepresentative and perfectly useless: they can no otherwise be made intelligible, than by translation into correspondent portions of the universally employed language. To what end then employ, on any of these occasions, the generally unintelligible, to the exclusion of the universally intelligible locutions?

6. To non-professional eyes, they keep the subjects involved in darkness: to professional they afford no additional light.

7. Practical mischievous effects are—

1. Concealing the nature of the transactions, from many to whom the information would be of use.

2. Waste of time: to wit, of time employed by men in rendering intelligible to them this useless, and, to all but the initiated, unintelligible, or, at the best, perplexing phraseology.

On this occasion, as on so many others, sinister interest in a pecuniary shape is not by any means the sole cause of the adherence to ill-adapted practice. Self-esteem, from the possession of a supposed valuable acquirement, in which a comparatively few are sharers,—unwillingness to regard as wasted, so considerable a portion of a man's time—are sentiments, which concur with authority-begotten prejudice in strengthening the attachment to the practice, even in the most highly cultivated minds.

At any rate, so long as, on his part, the need of reference to documents expressed in this language continues, by no degree of original inaptitude can a man be warranted in leaving it unlearnt. But, to enable him to *read* it in the books of other commercialists, no necessity is there for his *writing* it in his own.

To a question concerning the particular *shape* in which the supposed *usefulness* of this distorted language may be seen to manifest itself, *brevity* was the answer returned. For a trial of its title to this useful property a short enough process might suffice. In a parallel column, opposite to each of the several technical phrases, write its import in ordinary language: adding in each case an exemplification or two of the use of it as applied to the details of so many individual transactions. It would thus be seen—in the first place, whether by the employment given to the technical language, any saving at all were made in respect of quantity of matter: in the next place, if yes, what may be the amount of it.

[a] See Appendix viii. to Chrestomathia, vol. viii. p. 155.—*Ed.*

vice belonging to any Administration Subdepartment, to the *Legislature* alone it belongs, on each occasion, to issue, for the procurement of a supply in any shape, a Procuration Mandate.

Enactive.

Art. 3. Exceptions are the several occasions, on which, by some precedent act of the Legislature, authority for issuing Procuration Mandates, for the purposes, and to the effect therein mentioned, has been given to the Prime Minister or a Minister within his Subdepartment.

Ratiocinative.

Art. 4. Exercising this function without authority from the Legislature, any functionary would, to the extent of the supply ordered by him, be acting as *Legislator:* to the amount of the expense thereof, he would be *imposing a tax.*

Instructional. Ratiocinative.

Art. 5. The person, by whom such indication is afforded, will naturally be a functionary, and *he* the functionary for the service of whose office the article in question is needed. In addition to whatsoever may be the function, to the exercise of which the supply in question is needful,—now comes the additional function, distinct from and in its exercise preparatory to, that of the *procurative* function, necessarily called into exercise—call it the *requisitive.*

Enactive.

Art. 6. Accordingly, in so far as, for any supply that comes to be needed, no sufficient procuration mandate remaining in force has been issued by the Legislature,—exercise will be given to this same *Requisitive function.*

Expositive.

Art. 7. By the *Requisitive function* understand *that* to which exercise is given by a functionary, when, conceiving, that for the due exercise of some other function belonging to him, the faculty of giving direction to the labour of some *person,* or that of making application of some *thing* to the public service is necessary,—he makes application to the Legislature, or to some other functionary, in whose power it is to place the article of supply at his disposal for that purpose.

Expositive.

Art. 8. Name of the written instrument, by which such application is made, a *requisitional instrument;* or for shortness, a *requisition: requisitor,* the functionary *by* whom,—*requisitee,* the functionary *to* whom, it is addressed.

Expositive.

Art. 9. The procuration mandate in this case not being valid or attainable, otherwise than by means of a correspondent requisition-instrument,—the faculty of issuing the *requisition-instrument* is, to that of issuing the correspondent *procuration-mandate,* what, in the case of a law at large, the *initiative* is to the *consummative,* or say the *effective.*

Instructional. Ratiocinative.

Art. 10. Whatsoever be the respective situations and ranks of *requisitor* and *requisitee,* the name of the instrument will be a requisitional, or say *requisition instrument,* or say *a requisition,* and no other. By any such distinction as that between *requisition* and *petition,* jealousies and contests might probably, useless complication would certainly, be introduced.

Enactive.

Art. 11. The *places,* from which requisition instruments will be issued, are the several *offices, in* which, for their several businesses, the need of the subject-matters required, is deemed to have place. Of all such need, indication will at all times be given, by means of the mimographical documents, as per Section 7, *Statistic function,* Bissection 2, Art. 7, with or without the aid of the *Inspection-visits.*

Instructional. Enactive.

Art. 12. Of the *heads,* under which the matter of a requisition instrument will, in all cases, be contained, examples are as follows—

1. Supplies needed what, according as they are *persons, things,* or *money.*
2. If *persons,—names* and *descriptions,* with the *expense,* as known or estimated, on the occasion of each.
3. If *things,—names, qualities,* and *quantities,* with their respective *prices* as known or estimated.
4. Proposed best *mode* of procurement, as per Section 4, *Functions in all;* and Section 7, *Statistic function,* Bissection 2, Art. 18.
5. *Times,* within which respectively needed.
6. *Times,* within which supposed capable of being made *forthcoming* at the place where needed, in a state fit for use.
7. Statement of the *stock in hand,* if any, of the article *required,* with reference to the *mimographical* documents, if any, as per Section 7, *Statistic function,* on the face of which the state of the stock appears.

Enactive.

Art. 13. When the Requisitor is the Minister, and the Requisitee the Prime Minister, the Requisitee will either reject the requisition, or confirm it: if he confirms it, he does so either simply, or with amendment: and, in either case, issues a correspondent *procuration mandate:* and so in the case of any other requisitor or requisitee.

Instructional. Enactive.

Art. 14. Checks on the requisition will be

—the exemplars of the mimographical documents and other statistical matter, in the hands of the functionaries, to whom, in each case, it will belong—to reject, simply confirm, or substitute, as above.

Enactive.

ART. 15. Such procuration mandate will be transmitted to the Requisitor, either immediately, or through the medium of the Finance Minister, as the case may require.

Enactive.

ART. 16. To the Minister of each Subdepartment it belongs, at all times, on his responsibility, to transmit, to the Prime Minister, appropriate and timely requisition instruments, for the procurement of such supplies, the need of which, for the business of his subdepartment, has, from time to time, come to have place.

Instructional. Expositive.

ART. 17. Service *permanent* and *occasional*; or say *ordinary* and *extraordinary*. In each several instance, in which the need of an article or aggregate of articles of *supply*, is regarded as having place,—it will belong either to the *permanent*, or to the *occasional* branch of the service: either to the *ordinary* or to the *extraordinary* branch.

Instructional.

ART. 18. At the commencement of this Code, the Legislature will have to make provision of the *first* supply provided: call it the *outset supply*. On that occasion, it will be considered—whether any, and if any, what part, of that which is provided, shall be distinguished from the rest by any such denomination as the *occasional*, or say *extraordinary* supply.

Instructional. Expositive.

ART. 19. The particulars of the *outset supply* being settled, the Legislature will determine and declare—at what point of time the provision thus made shall, for the first time, be *renewed*: say at the expiration of the then current solar year, and thenceforward at the expiration of each ensuing solar year. If the point of time be any other than the last moment of the solar year, and the recurrence of the renewal *annual*,—here then will be constantly employed and necessarily referred to, a sort of year different from the solar: call it the *service year*. If, in this case, to outweigh the burthen of the complication, there be any preponderant convenience,—any Subdepartment, or any office, may accordingly have its own *service year*, different from that of every other office, as well as from the *solar year*.

Name of the day on which, for the service of the then next ensuing year, whether solar year or service year, the consideration of the supply to be provided for that same ensuing year commences, say *The General Supply Day*.

Instructional.

ART. 20. On this occasion, the Legislature will determine and declare—whether, in the interval between the time of this first supply and that of the next, provision may, to any and what amount, by any and what functionary or functionaries be made: and in each case, if yes, whether by *spontaneous* mandate, or not otherwise than in consequence of a *requisition instrument*; declaring, in this case, from what office or offices, for the obtainment of the corresponding procurement mandate, it may be addressed.

Instructional. Expositive.

ART. 21. Diversifications, which, on this occasion, the nature of the case admits of, are the following—

1. *Procurement spontaneous*—that is to say effected without *antecedent* requisition; namely, by an occasional *mandate*, issued *by the Legislature*, and directed either to the *Prime Minister*, or to this or that *Minister*, or *subordinate* of any grade belonging to the Administration department: and, in this last case, either *directly*, or through the *medium* of the Prime Minister's office.

2. In virtue of appropriate general and *permanent* powers conferred by the Legislature, procurement mandate *spontaneous*, emanating from, and issued by, the *Prime Minister*, and addresssd to such subordinate functionary or functionaries, as the nature of the case is thought by him to indicate.

3. The like from the *Minister* of any subdepartment.

4. The like from a *subordinate* of the Minister in any subdepartment.

Enactive. Ratiocinative.

ART. 22. If, in this way, from any office, a procurement mandate, whether spontaneously issued or in consequence of requisition, be sent down to an office of any other than the next immediate grade, exemplars will, at the same time, be transmitted to the intermediate office or offices. Reasons—

1. That, in case of neglect or delay, compliance with the mandate may be enforced by the intermediate superordinate.

2. That no functionary may, without his knowledge, be divested of any part of the stock, personal or real, of which he may have need, and for which he is responsible.

Instructional.

ART. 23. On the occasion of the first *general supply day* that ensues after provision made of the *outset supply*,—the Legislature will have before its eyes, or at its command, the result, in all its parts and elements, of the *Statistic* and *Registration* system, carried on during that interval, as per Section 7, *Statistic Function*. It will thereby, on appropriate and substantial ground, be in a condition to draw a more determinate line, between the *ordinary*

and all *extraordinary* service,—and to determine—by what offices, if by any, and for what purpose, procurement mandates may be issued, without antecedent and correspondent requisition, and from and to what offices, *requisition instruments* may be transmitted, in such sort, that, from those to which they are transmitted, correspondent procurement mandates may be issued, and followed by the transmission of the correspondent supplies, when accordingly procured.

Instructional.

Art. 24. Of the considerations, by which, on these occasions, the determination, of the Legislature will naturally be guided, examples are as follows—

1. The importance of the branch of service in question.

2. The quantity of the stock, in whatsoever shape, of which, in the interval, need is capable of having place, and likely to have place.

3. The degree of suddenness, of which the demand is susceptible.

4. The expense necessary for procurement.

Note, that by the uninterruptedness of the labours of the Legislator, as per Ch. vi. Legislature, Section 18, *Attendance*,—the *latitude* of the powers necessary to be given for procurement, as above, with or without antecedent requisition, will of course be *minimized*.

Instructional.

Art. 25. To a subordinate, scarcely will the importance of the service afford any sufficient reason for giving the power of procurement, in any other case than that in which, by his waiting for authority from his superordinate, the performance of the service to which the article was necessary, would have been prevented or materially delayed.

Instructional.

Art. 26. Examples of cases, in which, in a subordinate situation, power of *self-supply*, as above, may be necessary, are the following—

1. *Military necessity*, in the *land* defensive service.

2. So, in the *sea* defensive service; see Ch. x. Defensive Force.

Instructional. Expositive.

Art. 27. Modes of procurement, as per Section 4, *Functions in all*, and Section 7, *Statistic function*, Bissection 1, Art. 18.

Exemplificational.

Art. 28, Cases in which, between mode and mode, as to certain articles, *competition*, or say *antagonization*, may have place: Examples are as follows—

1. Army and navy subdepartments: requisites, arms and ammunition; antagonizing modes, *fabrication*, and *purchase*.

2. Navy subdepartment: requisites, navigable vessels: antagonizing modes, *fabrication*, *purchase*, and *hire*.

3. Health subdepartment: requisites, various medicines; antagonizing modes, *fabrication*, or say *preparation*, and *purchase*.

4. All subdepartments: requisites, appropriate edifices: antagonizing modes, *fabrication*, *purchase*, and *hire*: and as to *fabrication*, antagonizing modes, *Government account and contract*.

Instructional.

Art. 29. To the Legislature, in regard to each subject-matter or class of subject-matters, it will be matter of consideration—whether of itself to determine between the several antagonizing modes, after receiving appropriate information by *reports*, from the subdepartment to which it belongs,—or to commit the determination to the Prime Minister, or the Prime Minister of the Subdepartment, to the service of which the subject-matter in question belongs; always observing, that as the act of procurement by a functionary without authority from the Legislature involves in it, as per Art. 4. a power of *taxation*, so in an indirect way, does the determination as between two different modes: to wit, by determination in favour of the more expensive in preference to the less expensive.

Instructional.

Art. 30. For giving expression to the several sorts of *instruments* employed in the exercise of the function, as per Section 4, *Functions in all*, Art. 18, by direction from, and under the care of, the Legislature—appropriate and apt *formulas* will be framed: useful qualities therein to be specially aimed at—*clearness*, *conciseness*, *uniformity*, *legibility*, and *cheapness*.

Expositive.

Art. 31. By clearness, understand exclusion of *obscurity* and *ambiguity*.

Expositive.

Art. 32. By conciseness, understand exclusion of all needless words; for example, complimentary phrases.

Instructional.

Art. 33. Under this head will be considered the employment to be given to *abbreviations*, as per Section 7, *Statistic*, Bissection 6, instead of words at length: care being taken that they be sufficiently and promptly intelligible to all who have need to read them.

Instructional.

Art. 34. Rules for *uniformity* as to *expression*.

Rule 1. For giving expression to the same ideas, employ on each occasion the same words.

Rule 2. For giving expression to different ideas, employ on each occasion different words.

Instructional. Ratiocinative.

Art. 35. Uniformity as to *paper*, or other

physical ground of the signs employed,—exceptions, for special reasons, excepted,—to every exemplar, written manifold-wise, as per Ch. viii. PRIME MINISTER, Section 10, *Registration system*,—give the same dimensions; that in every office, exemplars may be put together in form of a book. In this particular, as between office and office, and book and book, no variation but for special cause.

Instructional.

ART. 36. *Legibility. Cheapness.* For these conjunct purposes, *printing* will of course be employed, in so far as, by reason of the number of exemplars needed, they are more effectually accomplished, than by writing *manifold-wise*.

Instructional.

ART. 37. *Stamping.* For saving labour and time, it will be for consideration—whether in any, and if in any, in what cases, to employ it instead of *writing:* for instance, where, in a *formula*, of which the greater part has been expressed by *printing*, expression is to be given to signatures, such as *names* and *dates*, the expression of which may require separate application to each several sheet. Regard will, on this occasion, be had to elaborateness of the figure, as a means of rendering forgery more difficult and rare. A subject for consideration and inquiry may be, whether the human countenance, as exemplified in the person of some extensively known individual, be not the sort of figure, in which imitation made by an ordinary hand, will, by ordinary eyes, be most generally detected.

Instructional.

ART. 38. *Sublegislatures.* With respect to exercise given to the several Administrative functions, as per Section 4, and in particular the *statistic, recordative, publicative*, and *requisitive*, to the Legislature it will belong so to order matter that, *mutatis mutandis*, within their respective fields of service, the like course shall be pursued by the several sublegislatures.

SECTION IX.

Inspective Function.

Expositive.

ART. 1. *Inspective function.* In so far as, in the exercise given to it, *migration* from the official residence of the functionary in question has place, this function may be styled the *visitative* function. Considered in respect of a number of *visits* successively made, each in a different place, the *visits*, or say *visitations* thus performed, may be styled *progresses:* considered, in respect of the form of the line of march described by the making of such progresses, they may be styled *circuits*.

Enactive.

ART. 2. In the exercise of his Inspective function, once at least in every year, and as much oftener as need may require and home business permit (so far as may be in person, as to the rest, each time by a *Depute*, permanent or occasional) *spontaneously*, or by direction as to *time* and *place* from the *Prime Minister*, the Minister of each Subdepartment will visit the several offices, and any such other *places* as lie within his charge.

Instructional. Expositive.

ART. 3. *Uses*, thence objects and *purposes* of this visitation system. Examples—

1. Securing execution and effect to the system of statistication, registration, and publication, ordained by Ch. viii. PRIME MINISTER, Section 10 and Section 11, and by this Chapter, Section 7, *Statistic function:* to wit, in relation to each individual subject-matter of registration,—that is to say, persons, immoveables, moveables, money, or occurrences, and whatsoever class it belongs, ascertaining whether it ought to be registered, and if yes, whether it has been registered, and if yes, how far the mode of registration is conformable to the existing ordinances.

2. In relation to each office inspected,—doing what the nature of the case admits of, towards providing a supply, as adequate as may be, for any such deficiency as shall have been observed in respect of the execution and effect which should be given, as above, to that end; taking personal cognizance of any such appointed subject-matters of registration and publication, as shall either have been left altogether unregistered or unpublished, as the case may be,—or not registered or published, as the case may be, in conformity to the appointed mode.

3. Taking, by *immediate perception*, cognizance of the state of those several subject-matters, in so far as the conception derived no otherwise than from the report of other persons, cannot be, or shall not have been rendered adequate.

4. Taking cognizance of the degree of appropriate aptitude, absolute and comparative, in its several branches, on the part of the several functionaries belonging to each office: to wit, with a view to ulterior direction and instruction; as also to continuance in office, transference to another office of the same grade, promotion, transference temporary or definitive, or suspension, or dislocation, as the case may appear to require.

5. Taking cognizance of any such *complaints* as any person may be desirous of making, as per Section 21, *Oppression obviated*, and of any such other indication, of *misconduct* on the part of functionaries, as any person may be willing to afford: to wit, for the purpose of eventual admonishment, transference, suspension, or dislocation, as the case may appear to require:

as per Section 20, *Insubordination obviated;* and Section 21, *Oppression obviated.*

6. With a view to *extra remuneration*, by promotion, or otherwise,—taking cognizance of any such *extraordinarily meritorious* service, as may happen to have been rendered, in relation to the business of the Subdepartment in question, or any other Subdepartment or Department, by any person, functionary, or non-functionary. As to this, see Section 15, *Remuneration*, and Section 25, *Securities*, &c. Arts. 6, and 18 to 29.

7. By appropriate instruction and direction, —solving any *doubts*, that may be found to have place on the part of functionaries, in respect of the exercise to be given to their respective functions; and, with a view to eventual transference in default of reconciliation, settling any *disagreements* that may be found to have place between functionary and functionary.

Instructional.

Art. 4. Places and Offices therein, which, in the exercise of this function, may require to be visited by the Ministers of the respective Subdepartments. Examples—

1. *Election* Subdepartment. Places, the stations of the several District Election Clerks, and Subdistrict Vote-receiving Clerks.

2. *Legislation* Subdepartment. Places, the residences of the several Sublegislatures.

3. *Army* Subdepartment. Places, the several fortified places, barracks, hospitals, and magazines.

4. *Navy* Subdepartment. Places, the several ports.

5. *Preventive service* Subdepartment. Places, the several places, in which functionaries, in bodies subject to the direction of the *Preventive Service Minister*, are stationed.

6. *Interior communication* Subdepartment. Places—

1. The several Post-offices, in so far as *time* suffices: where *not*, the aggregate of the several stations may be divided into *Circuits*, and the circuit progresses performed in the course of the year, together with the *times*, at which they shall respectively be performed, may, from time to time, be determined, by *lot*, publicly drawn, as per Section 16, *Locable who*. Supplement.

2. Edifices, and groundworks, belonging to the Subdepartment: in particular, such as, having been commenced, remain at the time unfinished.

7. *Indigence relief* Subdepartment. Places—

1. The seats of any Eleemosynary establishments maintained by Government at public expense.

2. The seats of Eleemosynary establishments, maintained at the expense of bodies corporate, or of individuals. If *time*—expense of conveyance being moreover considered—should not suffice for all, determination by *lot*, as above.

8. *Education* Subdepartment. Places—

1. The seats of any education establishments maintained by Government at public expense: as to which, see Section 16, *Locable who*, and Section 17, *Located how*.

2. Those, if any, maintained by the several Sublegislatures, at the expense of their respective districts.

3. Those maintained by bodies corporate, or by individuals. See Section 16, *Locable who*.

9. *Domain* Subdepartment. Places—

1. The several portions of land, edifices, and groundworks, kept in hand, or leased out, by Government, at the expense and for the profit of, the public.

10. *Health* Subdepartment. Places—

I. Dispensaries.

1. Central, in the metropolis.

2. Those in the metropolises of the several Election Districts.

3. Incidentally, in case of appeal, apothecary's or chemist's shops, in relation to which any censure shall have been passed, or direction delivered, by the *Health Sub-minister* within his district: as to which, see Ch. xi. Ministers severally, Section 10, *Health Minister*.

II. Hospitals.

1. Those maintained by Government at the expense of the whole state.

2. Those maintained by the several Sublegislatures, at the expense of their respective districts.

3. Those maintained by bodies corporate, or by individuals.

11. *Foreign Relation* Subdepartment. Places. Examples—

1. Of the habitations of the several Agents, Political and Commercial, of the several foreign powers, resident within the territory of this state, the residences maintained at the expense of the respective governments. This, with a view to eventual repair merely, and not without permission given by the respective residents.

2. Those, if any, which are supplied to them gratuitously by *this* state.

12. *Trade Subdepartment.* Places—

1. The several Docks, other Groundworks, if any, employed as receptacles for shipping, and the several other instruments of water communication from place to place, at which goods are exported to, or imported from, the dominions of *foreign* states.

2. The several inland barriers, if any, at which goods are exported into, or imported from, other ports, or barrier places, belonging to *this* state.

13. *Finance* Subdepartment. Places—the several Offices, at which on account of Government as trustee for the public, money is received or paid. For other examples and particulars, see Art. 7.

Instructional. Ratiocinative.

Art. 5. For different purposes, and on dif-

ferent occasions,—Inspection *visits*, and even *Progresses* and *Circuits*, may, by different Ministers, in various numbers be made, to one and the same establishment, public or private.

REASONS. Uses, thence objects and purposes, of this arrangement.

1. For different purposes, the same establishment, it will be seen, may require to be inspected, by so many different Ministers, in order to their being inquired into for those several purposes, and contemplated in so many different points of view: in each case, with reference to different branches, or even the same branch, of the public service.

2. By the cognizance thus taken in relation to the same subject-matter by divers functionaries, independent of each other,—the information furnished by each, will serve as a check upon the conduct pursued, and information furnished, by every other.

3. By this conjunction, no *collision* of authority will be produced; the *directive* function being, in each Subdepartment, in the hands of *one* person alone,—no obstruction need be afforded to it by any exercise given to the *inspective* and *statistic* function, by whatsoever number of different functionaries exercised, in relation to one and the same object.

Instructional. Ratiocinative.

ART. 6. Exceptions excepted,—for the second of the above reasons, it will be for the care of the Prime Minister so to arrange the visits of the several Ministers, in such sort that no two shall perform any *Inspection visit* at the same time one with the other.

Exception is—where, for some special, preponderant, and *declared* reason,—it appears to him that, for mutual explanation, information, and discussion, the purpose requires, that by two or more Members, by whom, by his direction, a visit is made at the same time, the inspective function should be exercised by them in each other's company, and thereby at the same time.

Instructional.

ART. 7. Cases, in which the good of the service may require that, by the Minister of two or more different Subdepartments, one and the same establishment should be visited. Examples—

1. Army Minister and Navy Minister. Subject-matters requiring inspection by each, with a view whether to conjunct or separate service. Examples—artillery, ammunition, and small arms.

Note, that as to the adequacy of the aggregate of the supply, the two interests are here *united*: in case of deficiency, *antagonizing*.

2. Army Minister, Navy Minister, and Preventive Service Minister. Subject-matters demanding inspection by each—troops, small vessels and their crews, arms and ammunition.

3. 1, Army Minister; 2, Navy Minister; 3, Preventive Service Minister; 4, Trade Minister; and 5, Finance Minister. Subject-matters requiring inspection by each, as above: on the part of the Preventive Service Minister, Trade Minister, and Finance Minister, where the casual cause of demand is forcible resistance, experienced or apprehended, in relation to execution and effect required to be given to ordinances and arrangements respecting imports, exports, or collection of revenue.

4. The same five Ministers, with the Interior Communication Minister. Subject-matters requiring inspection by each—the several instruments of communication, immoveable and moveable, in their several diversifications, for the purpose of giving effectual and adequately prompt *communication* to the several abovementioned instruments of *defence*, together with the instruments of *subsistence* for men and beasts of *conveyance*, occupied in the correspondent branch of the public service.

5. 1, Indigence Relief Minister; 2, Education Minister; 3, Health Minister. Subject-matters requiring inspection by each—all such establishments as have for their ends in view the administering the benefit of education, in conjunction with relief to indigence; especial care of health being alike needful in the two first-mentioned sorts of establishments.

6. Domain Minister, and every other Minister: to wit, in so far as the Land, Edifices, and Ground-works employed in these several branches of the public service, belong to the Public Domain.

7. All the several other Ministers, and the Finance Minister: in consideration that it is from or through his hands that every expenditure of money, and thence of money's worth, must come. Upon the expenditure of every other Subdepartment, without exception, his care is a needful and indispensable check.

Instructional.

ART. 8. The Legislature, the Prime Minister, and the Minister will have in consideration the advantage, derivable in some cases from the use of *chance*, for the purpose of securing unexpectedness to inspection visits, and thence constancy of good order in the places visited. For the mode of taking the decision of chance, see Section 16, *Locable who. Supplement.*

Instructional. Ratiocinative.

ART. 9. To the constant application of this security to establishments under government management,—the addition liable to be made to the quantity of time spent on the road, by fortuitous migrations made without regard to distance, would, by expenditure of time and money, oppose such a body of disadvantage, as would leave no adequate prospect of compensation: such being the security, afforded in all shapes, by the universal *registration and publication system*, coupled with the correspondent facility, afforded to individuals, for the

Of those persons who, in the scale of aptitude, stand on or near the same level, it is made known by public competition who those are who in the situation in question, are willing to serve the public on the lowest terms. Provision for moral aptitude is at the same time made, by a scrutiny, performed at the same time, in the course of the same examination, and with equal publicity.

If, to a person who, in the eyes of the universal public, is seen to stand foremost in the line of appropriate aptitude, and in that of cheapness of service, taken together,—he prefers a person not distinguished in either way, it is at his peril—at the peril of his reputation—that he does so. Nor can an improper choice afford any promise of producing to him any permanent advantage; for, in the case of every office, the power of *dislocation* is confided to a number of hands, each acting separately, with full power, and who, not adding to it (any one of them) the power of *location*, stand (every one of them) altogether divested of all inducement to abuse a power so thankless and unprofitable to the possessors.

For calling into exercise this dislocative power, there will be the motive afforded by the affection of envy in the breasts of disappointed rivals:—a check not capable of being brought into operation in the ordinary case of a purely arbitrary power of patronage.

The choice being thus narrowed, not only expense, but with it, power of corruption, is minimized: the benefit thus bestowed is the produce—not of favour, but of right: though not of legally binding, yet of morally binding right.

Enactive. Ratiocinative.

Art. 4. Under this system, two periods there are, in relation to which, separate provision requires to be made; the *preparation* period, and the *consummation* period. The consummation period, though last in the order of time, requires to be first described; the other not being otherwise capable of being made intelligible.

Expositive.

Art. 5. By the *consummation period*, understand *that*, during which the courses of proceeding regarded as necessary to the production of appropriate aptitude in the several official situations, in the degree of perfection regarded as desirable and attainable, will be carrying on, each of them during the whole length of time regarded as desirable. Of this period, the *commencement* will coincide with the termination of the preparation period: determinate *end* it will have none.

Expositive.

Art. 6. By the *preparation period*, understand *that* during which those same courses will have been going on, but will not have continued long enough, it is supposed, to have produced, with sufficient certainty, the whole of the desired benefit.

Instructional. Ratiocinative.

Art. 7. If in any degree beneficial, these same courses will, however, almost from the first, have been productive of some degree of appropriate aptitude, which benefit will have continued on the increase up to the point of time at which the preparation period terminates, and the consummation period commences. This increase, at every distinguishable stage of it, the Legislature will turn to profit, as per Art. 42, and those which follow it.

Instructional.

Art. 8. For these several courses, the several times of commencement will be appointed by the Legislature.

Instructional. Ratiocinative.

Art. 9. On these principles, throughout the official establishment, proceed the several arrangements, in virtue of which, so soon, and so long, as any person is to be found by whom appropriate proof has been given of his having reaped any distinguishable portion of the benefit in question, no person by whom like proof has not been given will be locable: and, by the whole amount of the thus acquired aptitude, how small soever, this system of location will be preferable to any in which no security at all is given for appropriate official aptitude. Thus it is, that not by doubt, nor even by despair, as to the practicability of carrying the system to the height of perfection here exhibited to view, can any tenable reason be given, for omitting to carry it so far as it shall be found capable of being carried into effect.

Instructional.

Art. 10. For this, as well as other purposes, the Legislature will have caused to be made, and published, an all-comprehensive list of the several situations, belonging to this, as well as the several other departments: name of it, *The Office Calendar:* as to which, see also Section 25, *Securities for Appropriate Aptitude.*

Instructional. Expositive.

Art. 11. General heads, under which, for the present purpose, these may be ranged, are—

I. Situations of talent.
II. Situations of simple trust.
III. Situations of trust and talent.

Expositive. Instructional.

Art. 12. By situations of talent, understand those so circumstanced, that, for the apt fulfilment of the duties attached to them, appropriate *knowledge, judgment*, and *active talent*, in some special shape or shapes, as per Art. 15, over and above appropriate *moral* aptitude, are regarded as necessary.

These situations will be formed into groups, corresponding to the several groups of branches of art and science, proficiency in which shall have been regarded as necessary to the apt

exercise of the several functions respectively belonging to the several situations.

Expositive.

ART. 13. By situations of simple trust, understand such, for the apt performance of the duties whereof no such proficiency is necessary.

Examples are—

1. Situations, the duties of which are discharged by the receipt, custody, and transmission, of money.

2. Or of messages from a central part of the territory of the state to every other: as in the case of Post-office situations.

3. Or of stores of any kind: except in so far as, according to the nature of the article, chemical knowledge respecting the causes and preventives of deperdition may be necessary.

4. So, situations, in virtue of which the *custoditive* function is exercised with relation to an immoveable subject-matter: excepting as above.

Expositive.

ART. 14. By situations of talent and trust, understand such situations of talent, for the apt performance of the duties whereof the disposal of the services of men in considerable numbers, or of things, for public use, to considerable value, is necessary.

Instructional. Expositive.

ART. 15. Of groups of talents, proficiency in which may be regarded as necessary to the apt exercise of the functions belonging to correspondent groups of situations, examples are as follow:—

I. *Talent-requiring Situations.*	II. *Talents therein more especially requisite.*
1. Army Minister, and his various subordinates, in the several situations of Commander of Engineers, of Artillerymen, and Cavalry; Commissary, for the purchase, preservation, and conveyance of military stores and provisions; Medical Curator; Military Judge.	1. Mechanic and Chemical Art and Science, various branches. Mathematics, in so far as subservient thereto. Fortification. Military Tactics. Medical Art and Science, in most of its branches. Judicature, as applied to Army Service.
2. Navy Minister, and his various subordinates.	2. Mechanic, Chemical, and Medical Art and Science, various branches, as in the case of Army Service. Astronomy, in so far as applied to the determining the place of a navigable vessel, whether at anchor or in her course. Mathematics, in so far as subservient thereto. Naval Architecture. Naval Tactics. Judicature, as applied to Navy Service.
3. Interior Communication Minister, and his subordinates in various situations belonging to this sub-department.	3. Mechanical and Chemical Art and Science, various branches; more particularly Hydrostatics and Hydrodynamics. Mathematics, in so far as subservient thereto.
4. Indigence Relief Minister.	4. Political Economy.
5. Domain Minister.	5. According to the nature of the several Domains—Agriculture, Geology, Mineralogy, and the several branches of Mechanical and Chemical Art and Science subservient thereto.
6. Health Minister, and his various subordinates.	6. Medical Art and Science, all its branches. Chemical Art and Science, all its branches. Mechanical Art and Science, various branches. Natural History, most of its branches. Geography, in so far as regards climate and temperature, in countries which the members of the community may have occasion to visit, either for war or trade.
7. Foreign Relation Minister, and his subordinates, in the several situations of Envoy for General Purposes, and Consuls for the special purpose of protection of trade.	7. Branches of Art and Science, corresponding to the faculties of reading, speaking, and writing, in various languages. Political Economy, in respect of the affairs of trade. History and Geography. National Statistics. International Law.
8. Finance Minister, and his various subordinates.	8.—1. Political Economy, as above. 2. Branches of Art and Science to which belong the several processes of the several manufactures and other branches of profit-seeking industry, the operations of which are liable to become subject-matters of taxation, restriction, prohibition, or compulsory obligation. History, Geography, National Statistics, and International Law, as above.

Enactive.

Art. 16. Except as per Section 17, *Located how*, Arts. 16, 17, antecedently to his admission into any office belonging to this department, the name of the individual must have been entered upon a certain list, called *the Locable List.*

Enactive.

Art. 17. For determining, in regard to each individual, whether he be qualified to be admitted; and accordingly, whether he shall be admitted, into this list,—and if yes, in what rank, a Special Judicatory will be formed, under the name of the *Qualification Judicatory*, or say *Examination Judicatory.*

Enactive.

Art. 18. Of this Judicatory the composition will be as follows:—

1. *Presiding Judge*, the Justice Minister or his depute.

2. *Other Judges*, the *Prime Minister* and the several *Ministers*, or their respective deputes.

3. *Quasi-jurymen*, the several *instructors*, as per Arts. 42 to 53, under whose instruction the several *locables* have acquired their proficiency in the several groups of branches of art and science.

As to Quasi-jurymen and their functions, see, in the part belonging to the Judicial Department, Ch. xvi. Quasi-jury.

Enactive. Instructional.

Art. 19. Included in the supposition of the sitting of a Judicatory of this sort, are the suppositions following:—

1. Returns made to the *advertisement*, as per Art. 42.

2. To the several places in question, pecuniary supply, afforded by Government; or ascertainment of the needlessness of such supply.

3. Time elapsed, sufficient for the obtainment of instruction, more or less extensive, in the several branches of art and science in question, or some of them; observation being at the same time made, that, how small soever, the instruction obtained in consequence of this plan will, by the whole amount of it, have been so much more than would have had place otherwise. More will always be better than less, but the least will always be better than none.

Enactive. Instructional.

Art. 20. Mode of procedure in these examinations:—in the main this will be the same as in an ordinary *Immediate Judicatory.*

Examples of points of *agreement* and coincidence are as follow:—

1. On the *pursuer's side*, *applicants*, and demandants (the several scholars) demanding admission into the *locable list*, and to that end presenting themselves for examination.

2. Subject-matter of demand, the *judicial service*, which the Judicatory will have rendered to the applicant, if being placed on the list, he is at the same time placed at the head of it, or in any such inferior place as shall have been thought fit.

3. *Defendants*, in like manner, these same several scholars, each contesting the demand made by every other, of the highest station, and the several next stations, one below another, as above.

4. *Evidence* in favour of his own aptitude, spontaneously adduced by each scholar in the character of *demandant*,—any such marks of proficiency, as, according to the nature of the case, the regulation shall have allowed to be exhibited.

5. *Other evidence* in his favour, elicited by *interrogation*, addressed to him by any Judges, or Quasi-jurymen, or fellow-candidates, so disposed.

6. Other evidence, elicited by *counter-interrogation*, addressed to him in pursuance of the opposite disposition.

7. Also, whatever *evidence* operates, in a *direct* way, in favour of any one of his several *competitors*, as above.

8. *Publicity*, throughout maximized.

Expositive.

Art. 21. Examples of points of *diversity* on the part of this as compared with an ordinary Judicatory, are as follow:—

1. Substitute or assistant, none, gratuitous or professional, to any such candidate, either as demandant or defendant.

2. Co-demandants or co-defendants, none *compelled* or *compellable* to be.

3. Extraneous witnesses, none compelled or admitted, except in case of necessity, on an examination into moral aptitude as per Art. 34.

4. Costs, that is to say, compensation to a party on the opposite side for expenses of demand or defence, none exigible.

Enactive.

Art. 22. Of the Qualification Judicatory the *opinative* decree will be thus formed:—*Modes of votation*, two: the *secret mode*; then, before the result of the secret mode has been disclosed or ascertained, the *open mode.*

Enactive.

Art. 23. Of the way in which votation in the *secret* mode may be conducted, an example is as follows:—

1. A roll of paper or parchment is provided: length such as to contain the names of all the several candidates, one under another.

2. In this roll are so many *columns*, placed abreast of one another, headed each by the names of such *groups of branches of art and science* as, for this purpose, have been assorted into groups, as per Art. 15.

3. Under each of these heads, in each

column, follow the *names* of the several *candidates*, in the alphabetical order of their surnames.

4. To each voter have been delivered *tickets*, in card or paper, equal in number to that of the *candidates*, multiplied by the number of the above *groups* of branches of art and science.

5. Underneath, or at the back of the name of each candidate, according to the space provided, the *voter pins a ticket*, exhibiting the number, expressive of the relative rank which it is his desire the candidate should occupy.

6. Say, for instance, voters (Judges and Quasi-jurymen together) 25; candidates, 200; groups of branches of art and science, 4: thence, total number of tickets requisite for each voter, 800.

7. Breadth of each ticket, say about one-fourth of an inch; hence, length of each roll, exclusive of the heading, 50 inches—4 feet 2 inches. Divide the roll into two equal parts, placing them abreast; length of each will be 2 feet 1 inch.

8. The words and figures employed, being, all of them, in print, and printed in the same press, the person of the voter cannot thus be made known, as by hand-writing it might be.

9. The two half-sheets of each sheet being folded one over the other, in the manner of a sheet of paper in folio, the *numbers* attached to the names, will *not* in any instance, be *visible*.

Enactive.

ART. 24. Mode of *giving in the votes*. On a day pre-announced, *the Judges* in presence of each other, *deliver in* to the Registrar, each of them, his *voting roll*, at the same time: as delivered in, these rolls are *shuffled*, in the manner of a pack of cards, that it may not be known by what person they have respectively been delivered in. They are then *deposited*, one upon another, in a box. The box is *sealed*, by an impression from each Judge's seal.*

Enactive. Expositive. Instructional.

ART. 25. Mode of scrutiny. For performing the arithmetical operation, the course taken is as follows:—

1. For the assistance of the Registrar, *scrutineers*, two or more, are *elected by the Judges*.

2. In case of equality, the *President* has a casting vote.

3. At the commencement of the scrutiny, and not before, the seals are broken. Thus, by the shortness of the time, all *unduly partial disclosure*, indicating by means of secret marks, which roll was delivered in by which Judge, is rendered *impracticable*.

4. In relation to each such group of subject-matters, the figures expressive of the ranks, assigned to the several candidates by the several voters, being summed up,—he, in regard to whom the sum is least, is thus seen to stand highest in the judgment of the whole Judicatory taken together.†

5. Example. Candidates, as above, say 200: voters, 12: if, by all 12, Candidate A is meant to be ranked highest, 12 will be the number expressive of such his rank: if lowest, 2,400. To facilitate conception, in an appropriate column, in a line with number 12, may be inserted number 1: so also in regard to the several other candidates.

Enactive.

ART. 26. In the *open* mode, the votation will be performed in nearly the same manner; sole difference, the name of the voter will be in his *own* hand, written at the top of his voting-paper.

Enactive.

ART. 27. It will be performed, after performance in the secret mode: and before the time, when, by the breaking of the seals, the result thereof is begun to be disclosed.

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* *Note by an East India Proprietor.* At the India House the forms of secrecy are established; but it is regarded as a signal of hostility to the Directors if, on the delivery, the vote is not made visible to him who presides. Secrecy is thus an imposture. Allowance of liberty of suffrage professed; tyranny and corruption practised.

† *Note by a highly distinguished officer of Artillery, bred up in the Government Academy at Woolwich, near London.*

Such is the practice at the Woolwich Academy. Of the proceedings of the examinations, a register is there kept, and monthly returns of the contents made. By these returns, the earliest commissions in the service are determined, and promotions are determined by seniority in service.

For the quieting of the anxieties liable to be produced on such occasions, respecting the correctness of the vote, the nature of the case does not shut the door against ulterior expedients. Suppose a voter hesitating as to the comparative aptitude of two or more condidates; in this case, to give the preference to any one above the other may seem to him an act of injustice.

Modes in which he may exempt himself from self-condemnation on this score:—

1. One is the determining by *lot* which shall be placed.

2. Another, which will naturally be correctly expressive of the desired equality, is the adding together the numbers, that would be expressive of the ranks, given to the several supposed equally apt candidates, if they were placed one above another, and then dividing the sum by the number of those same candidates: the quotient resulting from this division is the number which, on this plan, he attaches to the name of each. Thus much as to these particular candidates. By this mode his opinion will be correctly expressed in relation to these several candidates; nor, in this way, would the rank of those above or those below them be affected.

Enactive.

Art. 28. In the same manner, as per Art. 23, will be expressed, in the *secret* mode, the aggregate of the opinions of the *Quasi-jurymen*.

Ratiocinative. Instructional.

Art. 29. In their instance, the *secret* mode alone will have place. On their votes, favour or disfavour of candidates and their friends will operate, it is presumed, with more force than on those of the Judges. In the case of the *Quasi-jurymen*, they being the several Instructors, the interest which they respectively have in the aptitude of the persons located in the several official situations, is not so immediate and clear as in the case of the *Judges*. Each Quasi-juryman being an *Instructor*, it is for the interest of his reputation that his pupils, qualified or not qualified, be in the greatest number possible, placed in the highest ranks possible.*

Enactive.

Art. 30. Of the votation, in both modes, in a Table styled the *Ranking-table*, the results will be published at the same time.

Enactive.

Art. 31. The effect of priority being, as per Section 17, not peremptory, in such sort as to exclude the faculty of choice on the part of the locating superordinate, the result of both modes will lie, and will be seen to lie, before him, for his guidance.

Enactive. Instructional.

Art. 32. When time has brought into existence a sufficient body of experience, the Legislature will choose between the three modes: to wit, the secret mode alone; the open mode alone; and the two compounded, as above. In regard to the whole number of official situations, or this or that portion thereof, it will, if it see reason, ordain that they shall all three be employed: to wit, one during the first; another during the second; and the third during the third, of three successive years.

Enactive.

Art. 33. Of the comparative aptitude of the several instructors, presumptive evidence, more or less probative, will thus be exhibited. The rank of each several candidate being thus ascertained,—on a line with each, in an appropriate column, will be inserted the name or names of the *instructor* or *instructors*, under whose instruction he had studied, together with the *time* or times at which, and the length or *lengths of time during which*, such his study had been continued.

Enactive. Instructional.

Art. 34. For appropriate *moral* aptitude, the Legislature will, if it sees reason, appoint a limited list of topics, in relation to which, to the exclusion of all other topics, the several *Judges* and *Quasi-jurymen* shall or may interrogate the several competitors: and the several competitors, with the leave of the judges, one another.

Into any alleged irregularities of the sexual appetite, all scrutiny, as being irrelevant, and pregnant with useless and mischievous annoyance to third persons, will be interdicted.

Enactive.

Art. 35. Till such list has been framed and published, the liberty of interrogation will be unlimited. Power in this case to the majority of the judges, spontaneously, or at the instance of the candidate who is the subject of the interrogation, to inhibit answer, or declare the interrogatee at liberty to answer or not, as he thinks best. As to this, see Ch. xii. Judiciary collectively, Section 28, *Locable who*.

For falsity committed in this Judicatory, the interrogatee is responsible, as if it were in any other. So the interrogator, for any falsity asserted on the occasion of, or implied in, his interrogation.

Enactive.

Art. 36. Of the result of this scrutiny into moral aptitude, entry will be made in an appropriate register book, styled the *Candidate's Character Book*.

Enactive. Ratiocinative.

Art. 37. Appropriate moral aptitude being, in this case, mostly negative,—and where no imputation attaches, as will mostly be the case, not susceptible of degrees,—appropriate aptitude in this shape will not be subject to votation. Of this scrutiny, as of the other, the result will lie in the view of each locator, and will assist him in the formation of his choice.

Enactive.

Art. 38. From the result of the votation process, as above, will be framed, printed, and published by the *Registrar*, under the direction of the President, the aggregate *opinative*

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* *Note by a person of distinction bred in the University of Glasgow.* When prizes were given, votes, expressive of the degrees of proficiency, were delivered by the candidates themselves; each thus acting as Judge in relation to every other: justice was universally acknowledged to be the general, not to say the constant, result.

Addition by the Author. At Hazelwood School, near Birmingham, at which two Greek youths are educating by the Author of this Code, punishment is never administered, unless the accused has been found guilty by his fellow-scholars. Note, that in no shape is corporal punishment there practised.

In the present case, the multitude of the persons in question would with difficulty, if at all, admit of so extended a Judicatory.

decree, by which the ranks of the several *candidates*, say the several *probationary locables*, will be determined.

Enactive.

ART. 39. Consequent upon, and determined by, the opinative decree, will be the *imperative decree*, by which order will be given for their insertion in the *locable list*, and for the printing and publication of it.

Enactive.

ART. 40. To the name of no *probationary locable* will insertion be refused, on the ground of *intellectual* inaptitude, unless by an express decree of the majority of the officiating Judges. In case of imputed inaptitude, the degree thereof will be exhibited by the rank occupied by the individual's name in the list of *probationers*, as per Art. 25.

Enactive.

ART. 41. So neither, on the ground of *moral* inaptitude. But in the printed list, to the name of each probationer, to whose conduct, on the score of moral inaptitude, an objection has been made, a mark will be attached; and of what has passed, on the occasion of every such scrutiny, a *record*, under the care of the Registrar, will be made and *published*.

Enactive. Ratiocinative.

ART. 42. For obtainment of *instructors* in the several branches as above,—for maximizing the aptitude of those employed, by maximizing the number of those competing for the employment,—and, moreover, for pre-ascertainment of the expense to Government, *advertisement* will, by direction of the Prime Minister, be made of the several places at which it is proposed that the instruction shall be administered; together with questions, to which every person desirous of administering it may give answers. Name of this instrument —*The Prime Minister's Advertisement for Instructors;* or, for shortness, *The Advertisement for Instructors.*

Enactive.

ART. 43. Examples of these questions are the following:

1. At the time of answering, have you under your instruction, any and what pupils, and of what ages respectively, in any and what branch or branches of instruction contained in this advertisement; and during what length of time have you so had them respectively, mentioning in each instance the year, month, and day of commencement?

2. To any and which of them do you supply lodging and diet, or either, and which, and on what terms?

3. As to what other branches, if any, of art and science, in the groups stated in the advertisement, as per Art 15, or in any and what other groups, or separately, do you regard yourself able, being also willing, to administer instruction?

4. What remuneration do you require for each pupil, with variations, if any, according to age, or any and what other circumstance?

5. Shall you be able and willing, and when, for any and what number, to supply lodging and diet, or either, and which, and on what terms?

Enactive.

ART. 44. Of an advertisement to this effect, the object will be, to ascertain, in the first place, in what branches of instruction, and in regard to each, for what number of pupils apt instruction, may be expected, at the charge of the *individuals* more immediately benefited, and thence, what part of the expense will be required to be borne or advanced by *Government.*

Enactive. Ratiocinative.

ART. 45. As to the Government's share of the expense, the primary distinction will be between that part which must be advanced in the shape of *capital*, and that part for which an annual or other periodically received allowance, in the manner of *interest on capital*, may suffice: periodical allowance being preferable as far as it will go: preferable, inasmuch as, if ineffective or become needless, the expense may at any time be made to cease.

Enactive.

ART. 46. Of the *purposes* for which *capital* may be requisite, the principal are, *house-room*, *ground-room*, and appropriate *apparatus:* relation being, in this case, had to the several branches of art and science.

For house-room and ground-room, it will be the care of Government that no advance shall be made in the shape of *capital*, any further than room, suitable and adequate to the purpose, cannot be obtained for hire.

Enactive. Ratiocinative. Instructional.

ART. 47. For the maximization, not only of *frugality* and *extent of provision* as above, but, moreover, of appropriate *aptitude* on the part of the *Instructors*,—it will be the care of the Legislature, to minimize, in the instance of each Instructor, all such supply in a pecuniary and quasi-pecuniary shape as will be independent of the number of his pupils, and thereby of the strenuousness and constancy of his exertions.

Instructional. Ratiocinative.

ART. 48. In this view, it will be the care of the Legislature, that whatsoever remuneration is needed for engaging apt Instructors shall, in as large a proportion as may be, be defrayed, not by Government, but by the pupils, and their relatives: considering that, in so far as salary is provided at a fixed rate, independent of the number of the pupils, motives

for adequate exertion on the part of the alleged Instructors are altogether wanting; while the love of ease is an inducement, by the force of which, the absence of exertion will be secured: considering, moreover, that even if remuneration were made to rise in proportion to the number of the pupils, adequate motives for adequate exertion might still be wanting; the number being kept up for appearance sake, and the exertion no greater than what would be regarded as necessary to save the Instructor from disgrace; and that thus, in both cases, every allowance, thus made, operates as a premium on negligence, and as a prohibition on appropriate attention and exertion.

Instructional. Ratiocinative.

Art. 49. On the other hand, cases may have place, in which, on pain of leaving the service unprovided with the necessary instruction on matters of indispensable necessity, it may be necessary to provide extra remuneration, in a quantity such as to free the Instructor from any such dependence, as above, on the number of his pupils. But against this case provision, in a great degree effectual, will have been made:—made, by the inevitable constancy of attendance, and performance of the appropriate functions, at the seat of duty, on principles and by means, as per Ch. vi. Legislative, Section 20, *Attendance and Remuneration, how connected;* and Section 23, *Self-suppletive function:* so far as consists in the reading of lectures, performance being thus secured, although the motives for exertion may not be in quite so high a degree efficient as they might be rendered by emolument, rising in proportion to the number of the pupils, still may they be sufficiently effective, to make ample return for the expense. Delivery of the instruction, in some state or other, being by the supposition inevitable, regard for his own character will prevent a man from exhibiting the instruction in any such state as should expose his character to disgrace; and, in situations such as those in question, this will, on the part of most men, suffice to call into action nearly all such appropriate aptitude as they are conscious of being in possession of.

Instructional. Ratiocinative.

Art. 50. Of cases in which, in addition to bare subsistence, remuneration, rising in regular proportion with, and thence dependent on, the number of the pupils, may, as above, fail of being sufficient, examples are as follows:—

1. On the one hand, the branch of instruction, on the other hand, the state of the country such—that an extra mass of emolument, to a certain degree ample, may be necessary to attract instructors from *foreign countries.*

2. Or, in the country in question, from *rival pursuits.*

3. The branch of instruction such that, in the country in question, at the time in question, notwithstanding the multitude of those by whom it is, on account of the public, desirable that it should be possessed,—proficiency in it may not afford to pupils,—in number sufficient to make up such remuneration, as above, to the instructor,—inducement sufficient in their eyes to pay for the time, labour, and expense, necessary to acquirement.

Instructional.

Art. 51. In a case in which, under the persuasion of necessity, as above, any such extra rate of remuneration has at the outset been allotted,—it will be for the care of the Legislature so to order matters, that along with the necessity the overplus shall cease. Preserving, therefore, for the sake of good faith, to the first professor his agreed-for remuneration—such reduction will, accordingly, upon his decease, resignation, or dislocation, be made, as the consideration of the probable desirableness of the situation in the eyes of apt instructors,—consideration being moreover had of the habitual probable number of pupils, appears to admit of.

Instructional. Ratiocinative.

Art. 52. If, in this or that *place*, it should be found necessary to employ *public money*, in providing *pay* for the engaging of apt Instructors, care will at the same time be taken, *not* to make it *larger* than the pay customarily regarded as necessary for the subsistence of the lowest-paid class of labourers: for, if at the *place* in question, at the expense of parents and relatives, pupils cannot be obtained, in number sufficient to afford an adequate inducement to an apt instructor, it will follow, that that same place is not so fit as some other that might be found. For the mode, in which, on the part of instructors, comparative aptitude will be exhibited by the examinations. See Art. 32.

Instructional. Ratiocinative.

Art. 53. In this same view, the propriety will be seen of abstaining altogether from making any allowance for *lodging* or *diet* of pupils, considering, that in no part of the territory, in which any population has place, can there be any want of parents or other relatives by whom persons, apt in respect of age to become pupils, are already maintained at their own expense: and that, in so far as allowance were made for any such purposes, such allowance would operate as a premium, or bounty, on the production of population in excess.

Instructional. Ratiocinative.

Art. 54. As to *clothing*, if any Government allowance is made, it will be in the view of preventing the comparatively opulent from being excluded from the benefit of the instruction, by disgust produced from the spectacle of deficiency or uncleanliness, on the part of the comparatively indigent.

Enactive. Instructional. Expositive.

ART. 55. When, in consequence of the advertisement, as per Art. 42, answers, at the end of a sufficient interval of time, have been received,—the Legislature will, by a succeeding advertisement, fix a day, distant not less than (one year) from the day on which such last-mentioned advertisement is issued; on which succeeding day, at the appointed place or places, the *first examination* or examinations will be to be made. These days may respectively be denominated, the *examination-appointing* day or days, and the *examination* day or days; the advertisement, the *examination-appointing* advertisement.

Enactive. Instructional.

ART. 56. On the occasion of such examination-appointing advertisement, if not before, the Legislature will have determined, and will then declare its determination, as to whether the several branches of art and science, comprised in the several groups, shall be included all in one examination, or shall, in any and what manner, be distributed among divers examinations: those examinations to be performed by the same or divers *Qualification Judicatories*, at the same or divers times.

Enactive.

ART. 57. Length of the *consummation period*, say (seven) years. Day of commencement, either the day of the first examination, or some anterior day—say the examination-appointing day, as above. In each place if there be places more than one, the number of examinations in the course of that period will be, if annual, 7; if semi-annual, 14; if quarterly, 28. By the last examination will have been produced a complete set of functionaries, by whom the full benefit of the system will (it is presumed) have been reaped.

Instructional. Ratiocinative.

ART. 58. Coincident with the *earliest consummation period* that has place, will be the *preparation period*. So many years, half-years, or quarters, so many *stages*, into which it may be considered as divided. By whatever considerations the Legislature will have been determined to cause the course of instruction to be administered in its entire length, by the same will it have been determined to cause to be administered whatsoever smaller portion the interval of time will, at each stage, have admitted. For,

1. In relation to appropriate aptitude in official situations, any quantity of time, employed in appropriate instruction for the obtainment of it, will be better than none.

2. Of any given degree of such aptitude, any such *direct* evidence will be better than none.

3. On grounds unknown to all men, *no man's* bare opinion, in affirmance of another man's aptitude, can be so well grounded as that of *all men* will be, after *a* public examination, though there were no more than *one*, followed as it will be by collective judicial opinion, having such examination for its ground, and expressed by secret, and thence by free votation, as above.

Enactive.

ART. 59. Accordingly, when one year's instruction has been received, no person, those excepted who are already in office, will be placed on the *locable list*, unless he has been receiving the benefit of that same instruction throughout that one year: when two years, no person by whom it has not been received during those two years, those persons excepted who are then already in office, and those by whom the instruction had been received during the second year: and so on during the whole of the period—the quantum of appropriate instruction receiving every year an increase, until what is regarded as a sufficiency has been secured to all functionaries, in all lines, and the door perpetually shut against all those whose inaptitude stands self-confessed, and thus conclusively proved, by their shrinking from the test.

Instructional.

ART. 60. In relation to appropriate *moral* aptitude, the Legislature will consider—whether the course of examination relative thereto shall commence at the same *time* with the examination relative to the other branches of appropriate aptitude as above,—or not till at some and what later point of time; as also whether the acts of the examinee, which, on the examination, may be permitted to be brought to light, may commence at *any* point of time, or whether a time shall be assigned, to the end that no such act, anterior to that time, shall be endeavoured to be brought to light.

SUPPLEMENT TO SECTION 16.

USE OF LOT AS AN INSTRUMENT OF SELECTION.

Instructional.

ART. 61 or 1. Purposes, to which, on the occasion of a probationary examination, *chance*, substituted to *choice*, is capable of being employed, with advantage, as an instrument of selection, for the selection of a *part* of the whole number of desirable subject-matters of examination, in a case where want of time renders the employment of the *whole* impracticable.

1. Maximization of the *inducement* afforded to *exertion* on the part of learners, by impossibilizing the knowledge as to what part of the field of exercise the trial will be applied to, and thence making *aptitude* of equal necessity in relation to every part: thus, on the part of each, in so far as depends on exertion, maximizing the probable degree of *absolute* appropriate aptitude.

2. In respect of the degrees of *comparative*

aptitude ascribed to the several competing probationers by the aggregate judgment of the examination judicatory,—minimizing the probability of injustice, by impossibilizing the faculty of giving exercise to undue *disfavour*, by the selection of subject-matters of examination; —or *favour*, by the like selection,—foreknowledge of it being given or not given to the favoured candidate.

Instructional.

Art. 62 or 2. *Responses* and *exhibitions:*—to one or other of these denominations, will, it is believed, be found referable every token of appropriate aptitude, of which, on the part of a probationer, as such, in any branch of art and science, the nature of things admits the manifestation. Correspondent *function*, the exercise of which, on the part of examiners, is necessary,—in the case of responses the *extractive;* in the case of exhibitions, the *simply receptive:* as to which, see Section 11, *Information-elicitative function.*

Instructional.

Art. 63 or 3. Points, determined antecedently to the manifestation either of responses or exhibitions, will require to be the following:—

1. *Length of time*, intended and expected to be occupied in the whole process of the examination.

2. *Probationers*, entitled and expected to be examined—their whole number.

3. *Functionaries*, entitled and expected to take part in the examination, their several classes, and the number of individuals in each. As to this, see Arts. 17, 18.

4. *Classes of Examiners:* as per Art. 18, three.

5. *Number*, of individual *examinees* in each class.

6. *Aggregate number*, of the individuals in the aggregate of the classes.

7. *Time*, intended to be occupied in the elicitation of the appropriate information in the extractive mode, to wit, by *interrogations* followed by correspondent *responses.*

8. *Time*, proposed to be occupied in elicitation in the *simply receptive* mode: to wit, by *inspection* applied to *exhibition.*

For the several modes of elicitation, as applied to appropriate information, or say evidence in general, see above, Section 11, *Information-elicitative function.*

Instructional. Enactive.

Art. 64 or 4. Mode of procedure for the elicitation of *responses.*

For each branch of art and science, provide a *book*, in which the whole matter of it, or such portion as shall have been deemed necessary and sufficient, has been cast into the form of *questions, with correspondent answers:* say, for distinction, *responses.* Name, common to each such book, the *Question Book;* name of each such question book—that same generic name, with the addition of the name of the branch of art and science in question prefixed to it. Examples, *Chemistry Question Book: Mechanics' Question Book.*

Instructional.

Art. 65 or 5. For the purpose of obtaining the instructions afforded by it, the assumption is, that, by each probationer, the whole matter of it may have been stowed in his memory: but that, for the purpose of their making proof of such portion of instruction as they have respectively obtained from it, only a part of the instruction so obtained can be brought to view; brought to view, to wit, by responses, delivered in compliance with the corresponding questions propounded; only a part by the aggregate of them; consequently, not more than a much smaller part by any one. Such, accordingly, is the course here supposed to be determined on, and universally known to be so.

Instructional.

Art. 66 or 6. This being assumed,—one consequence is—what person soever it be, by whom, for the purpose of his undergoing the scrutiny in question, it is deemed necessary that he should enable himself to make apt response to any one of these same questions, by that same person will it be deemed necessary for him to enable himself to make response to all alike; whereas, supposing him to regard any one part of the whole number as being more likely to be propounded to him than others, in any number, —he would be tempted to content himself with qualifying himself for making answer to this most probably propounded part, leaving the remainder in a state of absolute or comparative neglect.

Instructional. Ratiocinative.

Art. 67 or 7. In the following mode, *lot* may be seen to be made effectually instrumental to the exclusion of partiality, as well unfavourable as favourable, on the part of *examiners.*

1. So far as it depended upon the choice of the examiner to determine the questions, or other tests of aptitude, that shall be propounded to a probationer,—the consequence would be a power of favouring or disfavouring, without any regard to appropriate aptitude, the pretensions of probationers, in any number, at his pleasure. To favour any probationer, he might propound such questions alone, how little probative soever of aggregate aptitude, as the probationer was best prepared to answer; or, to disfavour another probationer, he might propound such questions alone as,—to his (the examiner's) knowledge,—the probationer would be unqualified, or, at any rate, least qualified to respond to.

2. If, of the whole number of the questions that ought to have had place in the lottery, any part were omitted,—the lottery would, in proportion to the magnitude of the omitted part,

fail to be as probative a test of aptitude as it would be otherwise; and such would be the case, although it had been by *chance*, not *choice*, that the omission had been produced.

If, on the other hand, there were any person, by whose choice any such omission could take place,—it would, in this indirect way, be in the power of that person to give effect to undue partiality, favourable or disfavourable, as above.

Instructional. Enactive.

ART. 68 or 8. Mode of proceeding, by which choice is excluded, and to all eyes shown to be so. Example:—

1. Manner of arranging the questions, for the purpose of its being, in each instance, determined by *lot* which of them shall be propounded.

In the *Question Book*, the questions being designated, each of them, by a number prefixed to it, and the numbers following one another in numerical order,—a set of square tickets, (of card, suppose) all of equal size, marked with the correspondent numbers, are provided. These tickets, in the appointed manner, and in numerical order, are ranged together in juxtaposition—in the manner of squares in a *chess* or *draught* board, and, like them, enclosed in a square frame. Total number of questions (suppose) 1000: number of the above square tickets in each frame, as in a Polish draught board, 100: on this supposition, number of *boards* requisite, 10: size of the tickets such as shall suffice to render it manifest, to the requisite number of eyes, at one view, that for every question there is a ticket: and that for no questions there are tickets more than one.

Name of a ticket of this sort, a *question-indicating ticket*; or, for shortness, a *question ticket*.

Instructional. Enactive.

ART. 69 or 9. Manner of drawing out the *question-tickets*.

1. A box is provided, figure square or cylindrical; size, such as to admit of the tickets being thoroughly shaken in it, in such manner that no traces of the order in which they are originally deposited shall be perceptible: for a cover, it has a cloth, in which is a slit, long enough to admit a hand:—fittest hand, that of a child, not old enough to be exposed to the suspicion of having received instructions enabling it to act with discrimination. When the tickets have been dropt into the box, and a stiff cover substituted to the flexible one,—the box is handed over to a number of persons successively, to be shaken for a sufficient time by each: the inflexible cover being replaced by the flexible one, the hand is introduced into the aperture, and the question-tickets, in the pre-determined number, drawn out, and, as they are drawn out, exhibited to all present,—and, in the eyes of the same persons, lodged, as expeditiously as may be,—and now likewise, in so far as the necessary gaps admit, in numerical order—in an appropriate frame. The frame is thereupon covered up and sealed; and, either by the numerical order, or by fresh lot, may now be determined—which of the several questions shall be presented to the several probationers.*

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* *Reform in the English Style.*—In the Act, anno 1825, 6 G. IV., ch. 50, relative to *Jury Trial*, and commonly called Mr *Secretary Peel's Act*, Section 26, the following are the words, in which the mode of selection there appointed is described:—"Such pieces of parchment or card, being all as nearly as may be of equal size, shall be delivered unto the Associate or Prothonotary of such court, (viz. King's Bench, Common Pleas, or Exchequer,) by the under Sheriff of the county, or the Secondary of the city of London, and shall, by direction and care of such Associate or Prothonotary, be put together in a box to be provided for that purpose, and when any such issue shall be brought on to be tried, such Associate or Prothonotary shall in open court draw out twelve of the said parchments or cards, one after another."

On this occasion, what, on the part of the prime author of this act, and the draughtsmen respectively, was the design—whether to continue the present practice of *selection by choice*, called *packing*, or to substitute *chance* to it—is more than the author of the present work, by whom a volume on the subject had been published, (see the Art of Packing Juries in vol. v.) can take upon him to say: what he *does* say is—that if, having the act to draw, it had been his design to continue the reality of choice, with the appearances of chance to serve as a veil to it,—unless the fear of being detected by the choice made of means so palpably adverse to the professed end had not stayed his hand,—similar to the above wording, probably identical with it, is that which he should have employed.

In the new House of Commons, should any such *chance* happen to it as the containing so much as a single member, to whom the difference between *packing* and *non-packing* were anything different from a matter of entire indifference,—a motion will be made for an amendment, having for its object the substituting *chance* to *choice*. In this case, *mutatis mutandis*, unless aptitude for the professed purpose be religiously avoided, the wording in the text, or something not dissimilar to it, may, by another chance, be found to answer the purpose.

Thus much as to theory: now as to practice. In the natural course of administration and judicature, supposing, on this or that occasion, *choice* regarded as more conducive to *expediency* than *chance*,—gratification will not probably be given to the desire, but on some few, and those adequate occasions: for, in some nine cases out of ten, either the course taken by the verdict will be a matter of indifference, or the verdict suggested by *expediency* will be deemed sufficiently secured by other causes. By the multitude of the occasions, on which no point would be to be gained by unfairness, the habit of fairness being thus rendered a matter of notoriety,—a high ground will thus have been formed, from which to thunder down the charge of insincerity, on whosoever shall have had the audacity to speak of any such intention as that of ever putting, to their obvious use, the instruments provided as above. Thereupon, should peradventure any *packing-worthy* occasion happen to take place, there are they at hand—the effectual means of choice, and the obvious manner of giving effect to them, much too simple to present any demand for instruction in the nimble-

Instructional.

Art. 70 or 10. In the same manner may be determined whatsoever *exhibitions* the several probationers shall have to perform.

Institution, in the practice of which this same *fortuitous* mode of selection, for the probation of appropriate aptitude, is exemplified —the *Health subdepartment* at Berlin.*

Instructional.

Art. 71 or 11. A mode—the surest and most commodious of all that presented themselves—being thus proposed, for obtaining a decision at the judicatory of *Fortune*,—this, as well as any other, may be the place, for taking and exhibiting a supposed all-comprehensive view of the *occasions* on which, and the *purposes* to which, beneficial application may be made of it.

fingered art. Nothing is there to hinder a mark from being put on one side of a ticket, on the other side of which a name is written: not that any such trouble is necessary; for nothing is there to hinder the names—one and all—from being uppermost.

In the formation of the immediately acting list, a sort of gauze veil, with a colouring of *chance* upon it, is thrown over the packing machinery, as above. But, the *original* list, out of which this immediately acting list is thus to be packed—by whom, and how is it to be formed? Answer. By the *Sheriff*—a member of the aristocracy, named every year by the King. This, per Sections 13, 14, without disguise. And, lest this original garbling should not suffice, by whom is this garbled list to be regarbled? Answer. By the very judicatories, whose power of garbling was the grievance, to which this statute is the professed and supposed remedy: for, by Section 20, all the great criminal courts, commencing with "the King's Bench," are expressly confirmed in the power of doing whatever they please in regard to the selection of jurors—"in manner heretofore used and accustomed,"—by "order, orally or otherwise.....amending or enlarging the pannel of jurors returned for the trial of any such issue." And this *heretofore known and accustomed manner*—supposing the existence of any possibility of knowing it—by whom is this possibility possessed? By the judges, and by them alone: by the judges, who, on each individual occasion, cause this supposed check upon their conduct to be whatsoever best suits their purpose.

Thus, by this statute is the acknowledged grievance—instead of being, as professed, remedied—aggravated to the very uttermost; and the jury system—the supposed check to despotism—and, so far as it is a check, the only check by law established, —converted, from a feeble and very imperfect *check*, into a most powerful *instrument*.

* Work, from which the indication of it was taken—"A Corrected Report of the Speeches delivered by Mr Lawrence," in 8vo. London, 1826, p. 102. Sole indication of *lot* there furnished—"*taking out of an urn*;" no ulterior indication being, on that occasion, regarded as necessary. This little work of the illustrious Therapeutist would form a highly instructive supplement to the present Section: *Uses* of it,—1. Obstacles to official aptitude in general, indicated: 2. Established modes of trial, exemplified.

Instructional.

Art. 72 or 12. Cases, in which this same mode of selection is susceptible of being employed with advantage in the attribution and distribution of benefits in other shapes besides the above:—the benefit too small in value to be administered in the shape of the smallest denomination of coin; or at any rate to pay for the unavoidable expense of *requisition* or *transmission*, with the intermediate and subservient operations included in that of *communication*. Examples—

Division of a fund constituted by, and composed of—

1. The effects of a *proprietor deceased*.
2. The effects of an *insolvent*, extraneously declared such, or self-declared.
3. The subject-matter of a *bequest* or *donation*, ordaining money, from a certain source, to be divided among persons of a certain description.
4. *Prize-money:* money produced by the division of a mass of specie, or sale of a mass of property in other shapes, taken in *war*.

Instructional.

Art. 73 or 13. Cases, in which it is susceptible of being applied to the *location* of a *burthen:* the burthen, (suppose,) *that* which is imposed by the obligation of rendering service, burthensome to the individual rendering it, but regarded as serviceable to the community at large, or this or that section of it.

Case I. Delinquency not imputed. Examples:

1. Militia service. As to this, see Ch. x. Defensive Force.
2. Quasi-jury service. As to this, see Ch. xvi. Quasi-Jury.

Instructional.

Art. 74 or 14. In these cases, the supposition is—that the burthen is not divisible. In itself it certainly is not; but, in respect of time of duration, personal service, in any shape, is susceptible of division. Moreover, where the burthen itself is *not* divisible, the hardship attendant on it *is* divisible: to wit, by grant of pecuniary compensation, coupled with the division of the burthen of paying the money, among the several persons among whom the correspondent benefit is shared.

Instructional.

Art. 75 or 15. Case II. Delinquency imputed, and regarded as proved.

1. Of delinquents, convicted or convictible, the number so great, that, if punishment were applied to every one, the benefit of the remedy, applied by the aggregate mass of it, would be outweighed by the sum of the burthens imposed by it on the delinquent individuals and their several connexions.

Instructional.

Art. 76 or 16. Physically speaking, in the

nature of things, *chance* is capable of being employed either *in lieu of choice*, or *in association* with it: in association with it, either, 1, by being made to *precede it*, or 2, by being made to *follow* it.

The being employed with it *at the same time* in a decision on the same point, was scarce worth noticing; on *exactly* the same point at the same time, it cannot be: if, of any proposed subject-matter, one part be placed under the dominion of *choice*, the other under that of *chance*,—by this arrangement nothing more is done than the taking of the two thus distinct cases, and confounding them into one.

Instructional.

ART. 77 or 17. What is called a *lottery*, may be constituted—1, by the act of the parties interested:—*i. e.* by a *contract*, to which, as to other contracts, the sanction of law is applied: or else 2, by the law itself, without waiting for any consent of parties.

Instructional.

ART. 78 or 18. The case, in which the consent of *parties* is *not* waited for—the institution of the lottery being the act of the *law*—is the only case that belongs to the present subject. The other case belongs to the *expositive* matter of the *Penal Code*, and has no place here. Note always, that, in the case of a Government lottery, in the same manner only as an individual contracting party, does the Government act,—not in its coercive character. In a Government lottery, no man is compelled to purchase tickets, any more than in a private one.

SECTION XVII.

Located how.

Enactive. Expositive.

ART. 1. *Pecuniary Competition.* So soon as, by the records of the Qualification Judicatory, candidates, apt for official situations, and thence placed on the *locable list*, have been made known,—the Prime Minister will, by advertisement, give notice, of the day on or before which, but not after which, the offers of persons desirous of filling the several situations are to be delivered in at his office. These offers will be so many biddings in the *office competition process*. Name of this advertisement, *the pecuniary—competition—inviting*, or *official pecuniary—competition, advertisement*. The *pay* annexed to each office having been predetermined by an ordinance of the Legislature, each *bidding* will be either *reductional*, or *emptional* or *compound*.

Expositive.

ART. 2. By *a reductional bidding* understand—an offer, to accept, along with the situation, a quantum of pay, less than the appointed quantum, by a sum therein named.

Expositive.

ART. 3. By an *emptional bidding* understand—an offer to give, for the situation, with the appointed quantum of pay, a sum therein named.

Expositive.

ART. 4. By a *compound bidding* understand—a bidding, in which the reductional and the emptional offers are combined.

Enactive.

ART. 5. On the occasion of this same pecuniary competition,—from no person other than those on whose claims a judgment has been passed in the Qualification Judicatory will any bidding be available. No person, by whom a trial in the Qualification Judicatory has not been undergone, is in any one of these situations locable.

Enactive. Instructional.

ART. 6. *Pecuniary Security.* In relation to the several *simple trust* and *talent and trust* situations, as per Section 16, Arts. 10, 11, 12, 13, the Legislature will have determined—in what instances, and in what shapes, *pecuniary security* shall be required at the hands of Locatees: and, at the biddings, made on the occasion of the pecuniary competition, each bidder, making reference to such determination, will add in detail the pecuniary security he is able and willing to give.

Expositive.

ART. 7. Of every Minister, the situation is one of *talent* as well as *trust*.

Enactive.

ART. 8. No person will be admitted, either as Principal or as Deputy, to the exercise of the functions belonging to any situation standing upon the list of official situations in this department,—or to any pay as Principal, until an appropriate *instrument of location*, signed by Locator and Locatee, has been lodged in the records of the office.

Enactive.

ART. 9. In this instrument, matter will be to be entered under the several heads following: to wit,

1. *Name*, at full length, of the person located.
2. *His age* (mentioning the year, month, and day of the month, when born, so far as known) on the day of the signature of the instrument.
3. *Time*, that is to say; year, month, and day of the month, on which he was *admitted* into the *Locable List*.
4. *Rank*, assigned to him on that occasion, as evidenced by the *Ranking-table*, as per Section 16, *Locable who*, Art. 30.
5. *Bidding*, if any, made by him for the situation, with the particulars, as above, per Arts. 1, 2, 3, 4, annexed.

6. *Biddings*, if any, respectively made by whatsoever other persons were, for that same situation, candidates. Of these biddings, designation will be made, either by transcript, or abridgment, or simple reference to a separate instrument according as they are more or less numerous.

7. If preferred to any whose *ranks* were respectively superior to his, mention of them, with brief indication of the *grounds of preference*.

8. So, if there were any whose *biddings* were superior.

9. Service, in quality of Depute in that same situation, may be a sufficient ground:—the actual length of such service being specified, together with the year, month, and day of the month, on which it commenced.

Enactive.

Art. 10. Of each such *location instrument*, *exemplars* will be disposed of as follows:—

1. Delivered into, and kept in the office into which the Locatee is located, one.

2. Delivered into, and kept in the office of the Locator, one.

3. Delivered to the Locator for his own use, one.

4. Of the several functionaries, if any, who, in their several grades, are *superordinate* to the Locator, to each, one.

Instructional.

Art. 11. The Legislature will consider—whether, to the checks thus applied, any other and what checks on mislocation shall be added: as for example, a statement of the several connexions of the several candidates in the way of relationship, whether by consanguinity or alliance, fixing in that case the degrees. As to this matter, see Ch. xii. Judiciary collectively, Section 16, *Partiality obviated*.

Enactive.

Art. 12. When a situation subordinate to that of Minister is to be filled, the Minister will advertise for candidates, and receive biddings as per Arts. 1, 2, 3, 4, 5, 6; the faculty of bidding with effect being confined to *tried* persons, as per Art. 5.

Enactive. Instructional.

Art. 13. In the Location Instrument, the matter will be entered under heads, as per Art. 9, together with any such others as the Legislature shall from time to time have added.

Enactive. Expositive.

Art. 14. Exceptions excepted, as per Section 16, *Locable who*, Art. 59, no person who has not undergone trial in the Qualification Judicatory (as per Section 16) will (as above, Arts. 5, 12) be locable. But, in the case of a situation of *simple trust*, notwithstanding any inferiority in the scale of *talent*, the preference may, without reproach, be given to a candidate,—in consideration of the comparative advantageousness of his *bidding*, and the sufficiency of the pecuniary security, *self-seated* and *extra-seated*, proffered by him.

By *self-seated*, understand property possessed by himself; by *extra-seated*, property possessed by any such other persons, as have consented to stand bound for the eventual supply of any loss to the public, judicially proved to have had misconduct on his part for its cause.

Instructional.

Art. 15. As to pecuniary and quasi-pecuniary *security*, the Legislature will determine—in regard to what, if any, situations, the property, required for this purpose shall be required to be in such sort bound, as to be rendered inalienable in the hands of the possessor.

Enactive.

Art. 16. Exceptions excepted, in no situation of trust, or talent and trust, will any person be locable, until his age (whatsoever have been the number of his examination years) is that, at which a man is entrusted by law with the entire management of his own concerns: say [21] years.

Enactive. Ratiocinative.

Art. 17. Exceptions for considerations, are—

1. Army service; the military branch: in this branch, an officer is locable in the lowest grade at the age of [——] years.

For, in this grade, the functionary, though he has the command of some, is himself constantly under the command of others.

Enactive. Ratiocinative.

Art. 18.—2. Navy service, the military branch: in this branch, an officer is locable in the lowest grade at the age of [——] years. Reason, as per Art. 17.

Instructional.

Art. 19. On a comparative survey of the several subdepartments, and the several situations in each subdepartment, the Legislature will consider, in what instances demand for difference in grades has place, and, in so far as it is established, how far succession to a vacancy shall be influenced by it: that is to say, in what instances, in regard to any grade above the lowest, biddings under the pecuniary competition system shall have place.

Instructional. Ratiocinative.

Art. 20. On this occasion, the considerations following will be borne in mind:—

1. Of two persons, the one, suppose, has been habitually subject to the direction of the other. In this case, if, by a fresh arrangement, it happens to the superordinate to find himself subjected to the direction of his quondam subordinate,—a natural consequence is—on the part of the thus relatively depressed superordinate, a pain of *humiliation*—say, in

this case, *a pain of degradation*—a pain produced by the comparison made of his antecedently elevated, with his subsequently depressed state.

2. Where no such subjection has had place, no such pain is produced in a man's mind by the mere view of the rise of a person, who, not having been subject to his direction, comes to be located in a situation more eligible than his: in this case, therefore, that same reason, in favour of *settled succession*, has no place.

Enactive. Expositive. Instructional.

ART. 21. As to every situation subordinate to that of Minister, there will be two locators —the *initiative* and the *confirmative*. Exceptions excepted, as to every office in his subdepartment, the initiative locator is the Minister; confirmative, the Prime Minister. Exceptions, if any, remain to be excepted by the Legislature.

Enactive. Expositive. Ratiocinative.

ART. 22. If, in any subdepartment, any *initiative* locator, subordinate to the Minister, is established,—it will be in consideration of distance, lest, during the interval between the day on which the vacancy at the place in question takes place, and the day on which information of the *confirmative* location reaches that same place, the service belonging to the situation, so vacated, be left unperformed. In this case there may be *two initiative locators; temporarily initiative locator*, the next superordinate of the functionary by whose dislocation the vacancy is created; definitively initiative locator, the Minister.

Expositive. Instructional.

ART. 23. Examples of subdepartments, in which, in respect of *distance*, a demand for *initiative location*, in hands other than those of the Minister, and thence for *temporarily initiative location*, is more particularly apt to have place, are the following: to wit—

1. The Army Minister.
2. The Navy Minister.
3. The Foreign Relation Minister.

Enactive. Ratiocinative.

ART. 24. In the Army subdepartment, in so far as regards command over functionaries in the military branch, vacancies, in respect of *function*, are, in effect, for the occasion, without special appointment, filled of course; to wit, by the universally and necessarily established relation between rank and rank; as to which, see Ch. x. DEFENSIVE FORCE.

Instructional.

ART. 25. Not so, in so far as regards situations in the non-military, styled the *commissariat branch;* those, to wit, by whom, with relation to the matter of warfare, and the matter of subsistence, are exercised the several functions, *procurative, custoditive, applicative, reparative*, and *eliminative:* as to which functions, see Ch. ix. MINISTERS COLLECTIVELY, Section 4.

Instructional.

ART. 26. Nor in so far as regards the command of fortified places.

Instructional.

ART. 27. Nor in the Navy department, in which, in the establishments of the great maritime powers, in so far as regards the matter of subsistence, the above functions, as per Art. 23, are, in each ship, commonly exercised by a single functionary, styled the *Purser*.

Enactive.

ART. 28. In the Foreign Relation subdepartment, at each missionary station, as on the incapacity or absence, so on the death, of the principal functionary,—his functions will be exercised by a depute of his, as per Ch. viii. PRIME MINISTER, Section 4, *Self-suppletive function*. Failing such depute, if an established subordinate of the principal is on the spot, under a denomination, for example, such as that of *Secretary of Legation*, such subordinate will, for the time, except in case of special provision to the contrary, succeed as if located by a temporarily initiative locator, as above, Art. 22.

Enactive.

ART. 29. On a vacancy in the situation of *Vice-Consul*, by the *Consul* will the function of *temporarily initiative locator* be exercised.

Instructional.

ART. 30. In what stations, and on what footings, the power of deputation shall be exercised by a Vice-Consul, the Legislature, having regard to distance, and to the state of society in the foreign nation, in each case, will determine.

Enactive.

ART. 31. Of the locative function, the mode of exercise is as follows:—By the Minister, he being the initiative locator, an appropriate *location instrument* is prepared and conveyed to the office of the Prime Minister. After the lapse of [——] days exclusive, reckoned from the day of its being received in that office, the location will have become confirmed:* unless,

* On this occasion, the *rationale* will have to speak of this sort of expeditive arrangement, as generally applicable, for remedy, to the practice of indeterminate and indefinite *suspension*, through negligence or indecision:—a practice pregnant with distress to all individuals interested, as well as indefinite public mischief. Apply it also to appeals. See Ch. xxii. APPELLATE JUDICATORIES. Refer to Morning Chronicle, 27th May, 1824, mentioning Secretary Canning's indefinite suspension of an ordinance of the East India Direction, in the debate of the 26th. [See for farther securities here omitted Section 9, Arts. 18, 19, and Note.—*Ed.*]

under the signature of the Prime Minister, an instrument, in correspondent form, locating some other locable, or an order, suspending the effect of such initiative location, has, in the meantime, in the office of that same Minister, been received.

Enactive. Ratiocinative.

Art. 32. In case of any such substitution, reasons for the rejection, and the consequent location, will be expected: if none are given, the conclusion of the Public-Opinion Tribunal, and of the Legislature, will be—that none can be found.

Enactive.

Art. 33. *Deputes permanent.*—Without special reason, no person, who has not been upon the *general locable list*, as per Art. 18, is capable of being located as *depute permanent*, in any office belonging to this department.

Enactive.

Art. 34. Special reason is—where, in the *location instrument* by which the depute is constituted such, the names of all persons on that list being by recital or reference designated,—the locator states, on the part of each, either *refusal* or *inaptitude* actual or virtual, absolute or comparative: adding, in what particular shape or shapes such inaptitude has place.

Enactive.

Art. 35. In the *location instrument*, matter will in this case be inserted under the four first of the heads enumerated as per Art. 9, in the case of a person located in the situation of *principal* in the office.

Enactive.

Art. 36. Of the *deputation* instrument, *exemplars* will in this case be disposed of, in number and destination the same as in the case of the *principal*, as per Art. 10.

Enactive.

Art. 37. In any subdepartment, in the situation of Minister, or any situation thereto subordinate, should any person be located who has no right so to be,—such mislocatee, as also the functionary by whom he was mislocated, will, for such act of mislocation, be responsible: compensationally, if, through temerity, the act was culpable; compensationally and punitionally, if, through evil consciousness, it was criminal: so also their respective accomplices, if any, as per Penal Code.

Enactive.

Art. 38. But, on no such account, will any act done by such mislocatee, in the exercise of any function belonging to the office, be *null and void*, or say *invalid*.

Ratiocinative.

Art. 39. Reason. In so far as the exercise given to the function, though by an usurper, is apt, the end for which it was allotted to the office is attained, and no evil is produced; whereas, by nullification of the act, an infringement of the *disappointment-preventing* principle,—on which, as per Penal Code, the law of property rests,—would be committed, and, on the part of non-offending persons, suffering to an indefinite amount, produced.

Expositive.

Art. 40. Examples are as follows:

1. Acts of *sale*, performed in the exercise of the *venditive* function.
2. Acts of *lease-letting*, performed in the exercise of the *mercede-locative* function.
3. Act of purchase, done in the exercise of the *emptive* function.
4. Any act of *hire*, done in the exercise of the *mercede-conductive* function.

Enactive.

Art. 41. But, in such case, all persons, who have derived or would derive profit from the wrong,—whether privy thereto, and accomplices with the wrong-doing functionary or not,—will, as per Penal Code, be divested of all profit therefrom, provided they be exempted from all positive loss.

Supplement to Section XVII.

PECUNIARY COMPETITION PRINCIPLE.

Reasons, in support of it as hereinabove employed: employed, to wit, not as decisive, but as contributing, in subordination as above to the *aptitude manifestation system*, to the guidance of the decisive choice given to the responsible locating superordinate.

Ratiocinative.

Art. 42 or 1. I.—Reasons, direct and intrinsic, deduced from the greatest happiness principle applied to the nature of the case.

Case I. The situation, a *situation of simple trust*, as per Section 16, Arts. 12, 13: for appropriate *moral* aptitude, adequate provision being supposed to have been made: to wit, by Section 16, *Locable who* (Arts. 33, 34, 35, 36, 40,) and no special appropriate intellectual or active aptitude being regarded as necessary.

The presumption here is, that, but for some special reason, assignable and assigned, to the contrary,—the choice of the locating superordinate will fall upon that candidate, in whose instance the result of the pecuniary competition is most favourable to the public purse. On this supposition, all parties will have cause to be pleased: to wit,

1. The *community* at large; because that choice has been made, which is most beneficial to its aggregate pecuniary interest.
2. The *locating* functionary: the candidate's aptitude, and thereby the locator's responsibility, being alleviated by the result of the probationary trials, as above; say then the *locating*

functionary: unless it be his desire, at the expense of the community, in breach of his duty and engagement, and at the risk of his own fortune and reputation, to gain to himself an undue benefit, in the shape of *patronage*.

3. The candidate, by whose own offer the situation is procured for him.

Ratiocinative.

ART. 43 or 2.—Case II. The situation, a *situation of trust and talent:* to wit, after the manifestation made, of the grade acquired by the candidate, in the scale of manifested appropriate aptitude in all its branches, as certified by the certificate given by the *Examination Judicatory*, as per Section 16, Art. 17; that document contributing, in conjunction with the result of the pecuniary competition, to the guidance of the decision intrusted to the responsibly-locating superordinate.

I. Reason, grounded, as in the former case, on *intrinsic utility*. Only where, to the purpose of the practical conclusion, the claims of the two candidates, on the ground of the manifestation made as to *appropriate aptitude*, as above, are, in the opinion of the *Examination*, or say *Qualification Judicatory*, virtually equal,—does it seem likely, that the determination will be made, in favour of him, whose offer, on the ground of its favourableness to the *pecuniary interest* of the community, is accepted. The locating superordinate being, by Section 6, *Self-suppletive function*, responsible for the conduct of his subordinate, —he is thus, by a personal interest of no inconsiderable strength, urged to have due and adequate regard to the thus manifestly demonstrated *appropriate aptitude*. By a deficiency in the aptitude, he would stand exposed to be more or less a sufferer: in the small saving to the public purse, he would have no perceptible share.

The arrangement affords therefore a prospect of good, and this without a prospect of evil in any shape.

Ratiocinative.

ART. 44 or 3. II.—Reasons extrinsic, deduced from authority and practice.

1. In England, among the highest of the ruling few, the tide of events has of late years borne up some, in whose declared opinion, not only the price of labour,—in whatsoever shape —unskilled or skilled,—but also the price of commodities in general, and in particular of those means of sustenance which are worth all other commodities put together,—should be minimized; and that, as the only instrument of minimization, the competition principle should be uniformly and steadily employed.

Instructional.

ART. 45 or 4. These same distinguished statesmen—would they—durst they if they would—accede to the application of this same instrument to the reduction of the price of the labour performed by themselves and their present colleagues? or—not to insist upon that which could not reasonably be proposed—of the like labour when performed by their successors, and the colleagues of those same successors? O yes: when the energy of the people is to such a degree troublesome, that, in the high places in question, regard for consistency, and the comfort of the subject-many, cannot, consistently with the comfort of these same ruling few, be refused.

Instructional.

ART. 46 or 5. At present, engaged, by so efficient an interest to *maximize*, instead of minimizing, the expense of *official* labour,—they stand engaged by a no less efficient interest, to *minimize*, instead of maximizing, all need, and thence all proof, of *appropriate aptitude* with relation to such labour. If by competition—that competition being at the same time free and unrestrained—the degree of aptitude on the part of all competitors were made known,—the chance, in favour of the objects of their care, would, instead of being equal to certainty, be but as one to ten, or twenty, or whatsoever greater multiple of their own number might be that of their fellow-competitors. Moreover as,—natural talents, and other means being supposed equal,—*proficiency* will be in the direct ratio of *exertion*, and exertion in the ratio of degree of *need*,—those who, without exertion, are sure of having, in this shape, what they have need of, will not bestow any exertion at all on the acquisition of *appropriate aptitude:* and their natural *place*, instead of being certainly at the *top*, will be probably at the *bottom*, of the scale. Thus it is, that, to the ends which the greatest happiness principle requires to be pursued, will be substituted the direct opposites of those exclusively justifiable ends: and while, for the benefit of the hands in question, the *expense* of official service, or of the appearance, or the false pretence of it, without so much as the pretence of it, is *maximized*,—appropriate *aptitude* for the performance of it will be *minimized*.

Instructional. Exemplificational.

ART. 47 or 6. The more immediately education for office is under the direction of the ruling few, in whose hands the fixation of the quantum of remuneration, and the location of those by whom it is to be received are conjoined,—the more striking and instructive will here be the exemplification of the relation between cause and effect.*

Instructional. Expositive.

ART. 48 or 7. Note that, in the case of pecuniary competition is comprised in a certain way the case of *gratuitous service;* gratuitous

* For exemplifications, see the work entituled "Official Aptitude maximized, Expense minimized," in vol. v.

service constituting *one point or say degree*, in a scale of indefinite length, established by pecuniary competition; at the same time there is a necessity in marking the distinction between them; the difference in point of efficiency and extent of application being so great; the application of gratuitous service, (including that which is so in appearance, and is always called so,) being widely extensive, while the application of pecuniary competition to personal service in this branch of the public business is, nearly if not altogether, as yet without example.

Applied to the expense of the Official Establishment taken in its totality, (expense of remuneration for personal service included,) it is not in the power of pecuniary competition, by reduction of expense, to carry on good economy anything near to the point of gratuitousness—the point at which expense is equal 0.

At the same time, if applied to the purpose of engaging personal service in particular official situations, it is capable of carrying that same benefit not only up to the gratuitous point, but to a degree to an indefinite amount higher; the matter of wealth being but one of divers instruments, by the application of which personal service is engaged; others being *power*, *reputation*, and *dignity*; the dignity, that which results from the *nature* of the *occupation*, with or without *factitious* honour and dignity, superadded: in such sort that, instead of receiving money in compensation for the service rendered by him, in taking upon himself the obligation of exercising the functions of the office considered as *a burthen*—a man will be content to give money, for the faculty of exercising those same functions, that same faculty being regarded by him as a *benefit*.

But, in the instances of gratuitous service here alluded to, in so far as remuneration in a pecuniary shape has place, neither is it paid avowedly by the hands of Government for service performed in the situations in question; nor is service in any shape rendered to the whole community, nor otherwise than to a small particular and sinister interest of a small part, at the expense of the interest of the whole, which is thereby accordingly *disserved*, instead of *served*: in so much that, in so far as this same alleged service is performed, the remuneration derived from it belongs not to the present case; and, being so completely unfit or adverse to the purpose of the pecuniary competition,—required to be, with proportionable care, distinguished from it.

In English practice, to this head belongs the situation of *Member of the House of Commons*, and Member of the *Unpaid Magistracy*, styled *Justices of the Peace*. In these instances, nominally the service is uniformly gratuitous; really so, according as abuse does not or does take place.

Instructional. Ratiocinative.

Art. 49 or 8. To the proposed aptitude-securing and expense-minimizing system, as composed of the public examination system and the pecuniary competition system taken together, but followed by the choice left to the locating functionary,—various considerations, in the character of objections, present themselves, as having been, or being more or less likely to be, urged. With all employable diligence they have been searched for, and found reducible under the heads following—

I. Objection, to the public examination part of the system.

1. Timid merit excluded.

2. The unopulent excluded: thence, equality violated.

II. Objections to the pecuniary competition part of the system.

3. Venality established.

4. Munificence or say *liberality* excluded.

5. Depredation, sharpened by indigence, invited.

6. Aptitude diminished: aptitude being *as* opulence.

Of these in their order; with their answers.

Ratiocinative.

Art. 50 or 9. Objection 1. *Timid merit excluded:*

Answer. In the case of a more or less considerable proportion, of those who otherwise would be candidates for office, this effect may ensue. But, it presents not, to any precise amount, so much as a deduction from the aggregate of the good effects expectable from the system: nor anything more than the shadow of a reason for the rejection of it; yet entire rejection, if anything, is what it calls for. Proportional number of the individuals excluded by this their misfortune, say at random, and only for argument's sake, *one-tenth*. Suppose then the system to be in other respects a beneficial one,—such it will be—in the first place to the whole body of the unexcluded candidates, on their several individual accounts; in the next place, to the whole community, on the aggregate account. Give effect, then, to the objection, and for the sake of the unliquidated benefit to the one-tenth, the remaining nine-tenths will be deprived of that same benefit in one shape, and the whole of the community in the other. On the other hand, suppose the system rejected, this same one-tenth for whose sake it is rejected, in what determinable way will they respectively be benefited by the rejection? To this question, all answer is impossible.

Then, as to the *existence* of the alleged justificative cause of the proposed rejection—the supposed *merit*. In the instance of this tenth part, where is or can be the proof of it? True it is, that in whatever line of study or instruction the merit is supposed to have place,—timidity, to the degree and to the effect in question, is not incompatible with it; but, on the other hand, of the existence of the merit, neither conclusive, nor any how weakly soever

presumptive evidence, does the timidity afford. Of merit, in a word, timidity *may be* an *accompaniment*, but *is not* a *cause*.

This, and all other objections notwithstanding,—suppose now the *public examination* system established,—observe what, with regard to *merit* and *timidity*, will be the consequence. The trial to be submitted to being alike visible to all eyes, each individual, who might otherwise feel disposed to enter upon this career, will consider and ask himself whether he has *nerve* enough to undergo it. Let the answer be in the negative, he will then bid adieu to a pursuit, for which his own judgment pronounces him unfit, and betake himself to one, for which it pronounces him fit. So doing, where will be his loss? Answer—Nowhere: for proof, see answer to Objection 1. Before him lie, for his choice, all professions and other profit-seeking occupations, the profit from which is—not, as here, confined within the narrowest limits possible, but altogether unlimited. So much for proofs in a *pecuniary* shape. As to *reputation*, and esteem for services rendered to the public by intellectual labour,—the press is open to him,—and timidity,—at any rate, the sort of timidity here in question,—is no bar to any use he may feel disposed to make of it.

Ratiocinative.

ART. 51 or 10. But the proposed system —does it not hold up to view *unopulence* as an efficient cause of aptitude?

Answer. True: but only when in a certain degree, and, in that degree, only as a partially contributing cause, and that a remotely operating one, operating through the medium of *appropriate examination*. True it is, that in the character of a learner, looking to be one day a probationer and competitor for offices, —a man, whose pecuniary supplies are scanty, is *likely* to use more exertion than a man whose pecuniary circumstances are abundant:—to use more *exertion*, and thence, in so far as depends upon exertion, to acquire a greater degree of appropriate intellectual and active aptitude. But the immediately applying probative test of this same appropriate aptitude, is —not the situation in the scale of opulence, but the result of the *examination* undergone; and, by this immediately applying *direct* evidence, what little probative force belong, to the faint and remotely applying *presumptive* evidence, is superseded and reduced to nothing.

Ratiocinative.

ART. 52 or 11. Objection 2, *The unopulent excluded: thus, equality violated.* Answers—

1. The provision for equality must always be subordinate to that for security, or society cannot subsist. See *Leading Principles*, &c.*

2. Supposed relation of equality not real. The supposed loss to the classes in question will not have place. *Into* this source their industry could not be turned in quest of profit, without being turned aside *from* other sources much more lucrative: to the quantity obtainable by them from this source, there would be limits, and those rendered as narrow as, by application made of the frugality-maximizing principle, appropriate aptitude on the part of rulers could render them: to what is obtainable by every man from other sources, there are no such limits.

3. The bar, opposed to the unopulent by the proposed instrument of frugality, is not—like the bar opposed under some Governments, by want of nobility—an impassible one. By raising himself to a degree of opulence adequate to the purchase of the office,—the most unopulent man, supposing him demonstrated to be, by intellectual attainments, qualified for it, will be able to acquire it.

4. By the access, which, by the objection, is proposed to be left to the unopulent,—entrance into office would neither be secured to them, nor rendered so probable to them, as to the more opulent: the greater the opulence, the greater the means of access to patrons, who, of course, belong to the opulent class.

5. From the rejection of this necessary security, great would be the quantity of incontestable *evil* pressing upon this very class:—evil, pressing upon them in a much more tangible and sensible shape than any *good*, of the chance of which it is charged with depriving them, can be shown to wear: *burthen of taxation*, to the amount of the money which the competition would save, is in proportionable quantities added to that of the matter of patronage, with its corruptive influence. Mass of pecuniary remuneration saleable, say £1,000,000 a-year: saving effected by the competition, £200,000. To reject this instrument of economy, would thus be to impose *a tax* of £200,000 a-year on opulent and unopulent together: and this for no better purpose, than the turning aside the profit-seeking industry, of the unopulent, from other channels into this.

6. By the rejection of this proposed instrument of frugality, an exclusion would be put —not only upon the frugality, but upon the bringing into play a main security for, and thence instrument of, appropriate aptitude; namely, *relish* for the business. The less the emolument,—in other words, the more a man gives for the office,—the greater is thus proved to be his relish for the business of it: while to him who gives nothing for it, it may be an object of disgust: of disgust, not surmountable but by the extreme of indigence.

No, says another *objection*: what is proved is—not the alleged relish, but a plan for getting possession of the office, for the purpose of converting into an instrument of depredation the powers belonging to it. *Reply.* Of no such plan is the formation in any degree probable. This objection is Objection 5, *Depre-*

* Leading Principles of the Constitutional Code, in vol. ii. (p. 269;) see also above, p. 11.

dation, &c. which, with the answers, will be found in its place.

Ratiocinative.

Art. 53 or 12. Objection 3, *Venality established.* The plan makes offices *venal:* it introduces venality into office.

Answer. 1. Source of the objection, confusion of ideas: confusion produced by the misapplication of the word. What is proposed to be sold is—not to individual suitors at the office the *acquiror* of it, but to the acquiror himself, the *emolument*, in a particular shape, attached to it.

2. To find such a form of words, as should give to the objection, as above, a sort of superficial colour of reasonableness, required some industry. That which the objection applies to is—not the arrangement itself, but a particular word or two, which are capable of being employed in speaking of it. For example, the modes in which the amount of the pecuniary part of the remuneration is capable of being reduced and minimized, are, as above shown, two: to wit—1, The *reductional* mode; according to which, mention is made of the greatest *reduction* the bidder will consent to see made from a determinate salary proposed: 2, the *emptional* mode; according to which, mention is made of the greatest sum he will give for it, if *unreduced.* Employ the reductional form of expression, the objection vanishes: but, the emptional being in effect precisely the same thing as the reductional, so likewise does the objection to the emptional.

3. The party, to whom *service* in any shape is rendered by the arrangement, is the *public* alone: not any individual whatsoever: of no individual is any service *bought by*, of none any *sold to*, any other.

4. Associated with the idea of *venality* is that of *corruption;* and by the objection is meant, if anything, that, by the arrrangement, as often as it is exemplified, *corruption*, in some shape or other, has place, or at the least is *probabilized;* and that thence, in some shape or other, so is relative *inaptitude.*

5. But, the real effect of the arrangement is precisely the reverse: for, 1, Minimizing the pecuniary value of the situation, it minimizes the quantity of the matter of corruption which the patronage places in the hands of the locating functionary.

6. 2, Minimizing the value of the pecuniary remuneration, it maximizes, as above, the degree of *relish* which the candidate is likely to have for the functions which he is desirous of having the exercise of: for, the less the inducement he requires in the shape of *money*, the greater is the inducement he possesses in the shape of *relish*, or he would not make the offer, which, by the supposition, he does make.

7. Minimizing the value of the situation, and thence of the patronage, it minimizes the probability of its being given by the patron to a *protégé*, whose sole *relish* is for the *money*, and who, in regard to the *functions*, has neither *relish*, nor *aptitude*, in any shape.

8. As to corruption, so far then from acting as a *ferment* to it, the competition system is, in the emptional as well as in the reductional mode, a *specific* against that disorder: it is for want of such a specific, that corruption takes place, when it *does* take place.

9. In vain would it be said—a man, who sees sinister profit, in this or that shape, as being capable of being made, from an abuse of the powers attached to the situation,—will offer and give more for it than one who sees no such prospect. In vain; for, by the reduction thus made, in the quantity of money the man will have at command, no addition is made to whatever facility he will have for such abuse: on the contrary, as above, that facility is diminished by the diminution of whatever facility he may have as to the finding associates and supporters for the abuse: the greater the *reduction* he will thus submit to,—and still further, if so it be that he offers to give more for the salary than it is worth, the more he offers to *give* for it,—the more strongly he draws upon himself the attention of all concerned, and puts them upon the watch to find out—by what course, he expects, and proposes to himself to endeavour, to reap the sinister profit supposed to be in contemplation. Suppose even, that, as applied to the state of things under this or that existing Government, the objection would be a fatal one,—it would not follow that it would amount to anything, when applied to the one here proposed: for, in no existing Government can any system of securities for appropriate aptitude be found, comparable in point of efficiency to what may be seen proposed here.

Ratiocinative.

Art. 54 or 13. *Objection* 4, *Munificence*, or say *liberality*, *excluded:*—Exclusion put upon that virtue in one quarter, by which *merit* in other quarters, and in all manner of shapes, is brought into existence.

Answer. Let but misapplication of words be argument—argument, affording in the present case justification for useless and pernicious expense,—true it will be, that, as good argument may be made out of the word *munificence*, or the word *liberality*, as out of the word *venality*. *Liberality* may perhaps serve still better than *munificence.* Being more extensively in use, especially on the popular side, it is more strongly as well as extensively associated with the sentiment of approbation; and, by the laxity of its import, better adapted to the purpose of delusion. But, such being the nature of the arguments, see now on what ground stands the title of either of them to the property of giving birth to merit.

When, on the *one* part, what is called *liberality* is exercised, the alleged existence of *merit* on the *other* part—on the part of him or those in favour of whom the self-styled virtue is

exercised, is constantly alleged. Constantly alleged,—so far from being constantly proved, it is seldom so much as attempted to be proved. The place of proof is occupied by assertion: of the assertion, when orally delivered, the probative force is as the loudness and reiteratedness of it, joined to the force and number of eulogistic epithets and phrases bestowed on the alleged possessor of the asserted merit; and scorn, with the imputation of envy and insincerity, on all who presume to question it.

In the Official Establishment of the City of London, conquests have, it has been said, been of late years made of official situations more than one by the virtue of *liberality* from the vice of *venality;* these conquests made, and the source of them—a corresponding quantity of patronage—put into official pockets. The substance has now been seen of the eloquence by which these conquests were achieved.

Ratiocinative.

ART. 55 or 14. Objection 5. *Depredation sharpened by indigence.* When a man has paid the purchase-money (says the objection) he will be left in a state of indigence, such as will render it, as it were, a matter of necessity to him to commit depredation at any hazard. Answers—

1. The objection supposes, that, by a certain, or an ascertainable, quantity of emolument attached to the office, the endeavour to commit depredation may be prevented, or at least in an adequate degree improbabilized. Altogether groundless is this supposition. Draw the line where you will, true it is, the comparatively unopulent functionary will, it is probable, endeavour to commit depredation: and commit it he will, if in his eyes the benefit of the depredation is greater than the burthen from detection: probability in regard to detection being taken into account. This will the comparatively unopulent do; but so will the comparatively opulent. The most opulent of functionaries have always been the most voracious of depredators. Witness monarchs almost without exception, and more particularly the most absolute. Witness even "*the best of Kings*," as he was so commonly called: witness he, whose debts, it was asserted in Parliament, had been nine times paid by Parliament, notwithstanding his million a-year, —the exemption he gave himself from the income tax,—and his seventeen millions, obtained for his own particular use,—without previous declaration of war,—by the instrumentality of a richly remunerated Judge,—in point-blank contradiction to an act of the Legislature, passed in the year 1744: the decrees issued without other warrant than the words *Droits of Admiralty*, the assertion that the king is *Lord High Admiral*, with reference made to an order of the *King alone*, dated in the year 1665–6, and that King, *Charles the Second*.*

2. In the situation of the comparatively opulent, the probability of depredation is greater than in the case of the comparatively unopulent, on two accounts.

1. In consideration of, and in proportion to his opulence, and the erroneously but commonly and naturally entertained supposition, of the security afforded for his probity by that same opulence, he will be less suspected—less closely watched.

2. In proportion to his opulence, will be (as per Section 15, *Remuneration*, Art. 4) his facility for obtaining accomplices in transgression, and effectual supporters to screen him against punishment, dislocation, and even disrepute. Instances, see everywhere.

3. Of the absence of any such degree of indigence, as can probabilize a sharpness of appetite sufficient to produce depredation,—a highly probative evidence is afforded by the very nature of the transaction here proposed: what a man gives for the office with the emolument attached, he would not give, if in his eyes the emolument, with his remaining income, if he has any, will not be sufficient for his exigencies.

Instructional. Ratiocinative.

Exemplificational.

ART. 56 or 15. This was the argument against economy, brought out and made the most of, on the occasion of his sham Economy Bill, by *Edmund Burke*, foaming with rage at *Necker's* disinterestedness, then staring him in the face:—Edmund Burke, on whose principle thus displayed, the accidentally divulgated depredation committed by two of his *protegés*,† formed, not long afterwards, so instructive a comment. A document, in no small degree instructive to the great body of the people would be a list of at length notified depredators, with the particulars of their respective crimes, under a system of sinecure and overpay, with an assurance of support and protection. With the commencement of the reign of George the Third, it might commence, and be continued onwards, as occasion called, till the time, should it ever arrive, when, the eyes of the people having been sufficiently opened, the scene had closed.

Instructional. Ratiocinative.

ART. 57 or 16. In this objection, what there is of truth, or at least of the semblance of it, rests altogether upon a state of things, in respect of official management and remuneration, in its whole tenor the direct opposite of the one here proposed. A man, whose life has been a life of luxury without anything of his own to support it—the dependent of some patron, whose habits have been correspondently luxurious—is put into an office, with the emolument which has been attached to it, for the purpose of enabling him to continue in the

* Brown's Civil Law, ii. 57.

† Powel and Bainbridge.

same habits. If then this same emolument is *not*, by more than to a certain amount, beneath his habitual expenditure,—he confines himself within the bounds of it, and neither peculation nor extortion have place. But, if it *is* to a certain amount lower, he finds himself to such a degree uncomfortable, that rather than continue so, he risks the engaging in some one or more of the forbidden practices, and exposing himself to the consequences.

"But," it may be asked, "knowing his own propensities, how came he to take upon himself the office, and thus subject himself to this risk?" Answer. Nothing better offered; the situation of absolute dependence was uncomfortable; the mass of emolument in question, how inadequate soever, constituted, by the whole amount of it, a *portion* at any rate of the means of independence—and the general character of the whole establishment of which this office forms a part, was that of maximizing the facilities for *ease* on the one hand, combined with accustomed, though unlegalized profit in every shape, on the other. As to the punishment, he saw it altogether without example. Dislocation, and that self-effected, and in the quietest and most unobserved mode, the worst that could ensue: dislocation, and from what? from an office which, after experience, was found not to give what was expected from it.

Such is the state of things—such the frame of Government, in which the objection originated, and on each occasion will be reproduced. But, of the whole multitude of securities *here* proposed against abuse, scarcely will *that* system be found to exhibit so much as a single *one*.

Ratiocinative.

Art. 58 or 17. Objection 6. *Aptitude diminished. Aptitude being as opulence, lessening opulence you lessen aptitude.*

Thus, for shortness: for precision, a few more words are necessary. By *opulence*, understand—not opulence already possessed by the functionary, but opulence *given* to him: given to him *at public expense*. This being understood, say once more aptitude is *as* opulence. This is the whole theory, on which all practice is grounded. This, being an *axiom*, may without difficulty be taken for a *postulate*. If, therefore, in any situation you have not aptitude enough, it is because you have not given out money enough: give money enough, the aptitude comes of course: all other care is superfluous. Whatsoever be the situation, if you want twice the aptitude in it that you have at present,—give the man who is in it twice the money you had given him, you have twice the aptitude.

Note also, that, on divers occasions, the more he has, the more of it must be given to him. Instance, the metamorphosis of an indiscriminate defender of right and wrong into a Judge. The stronger the repugnance between the two characters, the greater the force necessary to effect the transition from the one to the other.

Giving out money is, in English Treasury language, *making exertions*. If anywhere you want more aptitude, you must make proportionable *exertions*. Giving out money being the cause,—establish this cause, the effect follows of course. Of a barrel full of spirits, turn the cock, out flows the spirits. Into the pocket of the functionary, in with the money,—in with it flows the aptitude. As to *how* this happens, this is, in both cases, matter of *theory;* no need have you to trouble yourself with it.

This objection comes in aid of the one last preceding, by which economy is presented in the character of a sure cause of depredation. Instead of *giving, receive* money, as the price,—of the power or other object of desire attached to the office,—you will (says the objection) have the reverse of aptitude; and the more money you receive from the functionary, the more flagrantly unapt in every respect he will be. On the other hand (says the basis of the present objection) aptitude being *as* opulence,—give twice the emolument you give at present, you will have twice the aptitude: and so on, *ad infinitum*. Put the two objections together, you have a triumphant *dilemma*. Offer (it says) with the office any less emolument than that which you will find attached to it,—either no person whatever will accept of it, or, if any one will, his acceptance of it will be a certain proof of his inaptitude for it; with no other purpose than that of employing it as an instrument of depredation, will the acceptance have been given to it.—The offer will not be accepted:—so says *horn* the first of this same irresistible dilemma. Good. But why will it not be accepted? Answer. Because, to be accepted, it must have been made: and it will not have been made. But *why* will it not have been made? Answer. Because by nobody but the maker of the dilemma can it have been made: and what *he* has made is—not the *offer*, but *the determination not to make it*. And why this determination? Answer. Because he has always been so perfectly convinced, that the offer, if made, would be accepted, and when accepted, followed by consequences, the opposite to those which his dilemma assigned to it: to his own assertion his own conduct gives the lie.

Tell him of any other country in which the rate is less, then come two other objections.

1. *That* country *differs* from this.

2. Of the smallness of the remuneration, the result is actually, in that country, a proportionable degree of inaptitude:—then, for proof, comes the assumption just disposed of.

As to the *difference*,—propose any inquiry into it; whether, for example, it is so great as to warrant, in the whole or in any part, the practical conclusion deduced from it,—Oh no: this would be too much trouble. So will say the objector: and in this instance what he

says may be admitted for true: a Committee would not be very instructively employed, in the inquiry whether it be true—that, when a man breaks a contract, for the performance of which no such securities as might be are provided, it is because it does not give him all he would have been glad to get from it, and not for want of those same necessary securities.

CONCLUDING INSTRUCTION TO THE PUBLIC-OPINION TRIBUNAL.

Instructional.

ART. 1. To the Public Opinion Tribunal it will belong, with all its energies, to urge the commencement, and urge on the progress, of the system of appropriate instruction here delineated.* By the most powerful particular and sinister interests,—the several Ministers, with their several dependants and other connexions, whoever they are, will at all times be urged to do their utmost for the retardation, and, if possible, the frustration of it. Of this repugnance the cause is no less manifest than the existence is unpreventable. Till the tests of aptitude thus furnished are in operation, the locating functionaries will, of necessity, remain in possession of a power of choice, altogether arbitrary: apt, or in ever so high a degree unapt, their several dependants and connexions will remain located and locable, in all situations under them respectively, from the least to the most highly desirable. On the other hand, no sooner are these tests of aptitude in operation, than, by the influx of tried minds, whose aptitude has been made manifest to all eyes, the sceptre of arbitrary power will be swept out of their hands, and the feelings of a dethroned despot will be theirs.

Instructional.

ART. 2. The whole artillery of *fallacies* will be drawn out and employed; in particular, the better the plan is in *theory*, the more incapable it will be pronounced of being carried into effect *in practice:* and to the thus predicted impracticability, all imaginable exertions will be employed to give fulfilment.

Instructional.

ART. 3. If, and in proportion as, in the dominion of the State, apt instructors, whose native language is the national language, are wanting,—either the functionaries must remain uninstructed and unapt, or, under the disadvantage of having to learn, at a more or less advanced period of life, a foreign tongue, foreigners must be called in and employed. But, unless in case of temporary calamity, men will not for nothing quit their old accustomed habits and connexions, for those of a strange land; and thus, under the double mask of patriotism and frugality, sinister interest will seek, and with but too much probability of success, a cover for mischievous and anti-patriotic exclusions.

Instructional.

ART. 4. Unhappily, no sooner has the system come into operation, than a dilemma, in no small degree unwelcome to every feeling eye, will have taken place: either, to an incalculable amount, sacrifice of the public good —of the good of every branch of the service— must have place; or, notwithstanding any, the most perfect, degree of moral aptitude, a more or less considerable number of functionaries will have to quit their several situations.

Instructional.

ART. 5. For minimizing the evil from these two opposite sources,—one means, however, there is, the application of which will be completely in the power of those functionaries whose situation exposes them to it. According to their several situations, let those in possession participate in the instruction administered to their successors in expectancy: at this price they will add those titles, whatever they be, in which others are sharers with them, to that experience which is peculiar to themselves.

Should pride be troublesome, let this fact quiet it. Anno 1824, in London, John MacCulloch, having acquired the reputation of proficiency in the art and science of political economy, instituted a course of lectures. Among his audience were Frederick John Robinson and William Huskisson, both Members of Parliament, both Cabinet Ministers: Robinson, under the name of Chancellor of the Exchequer, Finance Minister in the House of Commons; Huskisson, under the title of

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* Designed directly and principally for *official*, this system will, as far as it goes, operate as a system of *national* instruction, and *that*, without additional cost: not to speak of education in other respects. Assistant to *that* its least extensive, will be this its most extensive though indirect influencee. The better they are themselves instructed, the better will individuals, in quality of auditors at the several examinations, be qualified for the judging of the degrees of appropriate aptitude on the part of probationary *locables*.

Even in England,—among the suggestions in question, if considered merely in their application to national *instruction at large*, to the exclusion of *official instruction*, with a view to *location*,—some there may be which, even to the ruling few, will not be altogether an object of abhorrence. For, in the conduct of the majority of that class, the wish to shut out all intellectual light without exception, whatever possession it may have taken of some minds, does not appear to have manifested itself, by any conclusive evidence. Delusion, by means of false lights,—and the encouragement given for the reception of them by the application of the matter of reward in the character of matter of corruption, —are the principal means employed for preventing the *subject many* from endeavouring to substitute a form of Government favourable, to one hostile, to their interests.

President of the Board of Trade, Trade minister, in the language of this Code, as per Ch. xi. Ministers severally, Section 11.

Section XVIII.

Dislocable how.

Expositive.

Art. 1. Dislocation is either *unmodified* or modified. By *unmodified*, or say *simple* dislocation, understand definitive removal from an official situation, without consent of the dislocatee, and without his being located in any other.

Expositive.

Art. 2. Modes of modified dislocation, as per Section 4, *Functions in all*, are these—

1. Promotion, to wit, in the same subdepartment.
2. Suspension.
3. Transference, *permanent*, to the same grade in another subdepartment.
4. Transference, *temporary*, to the same grade in another subdepartment.
5. Transference, *permanent*, to a *superior* grade in another subdepartment.
6. Transference, temporary, to an *inferior* grade in another subdepartment.

Expositive.

Art. 3. Wheresoever the word *dislocation* is employed, dislocation *unmodified* is what is intended: wheresoever dislocation *modified* is intended, the denomination of the modification so intended is employed.

Enactive.

Art. 4. In both ways, every Minister is at any time dislocable by the Prime Minister.

Enactive.

Art. 5. So, by the Legislature.

Enactive.

Art. 6. Other efficient causes of dislocatedness are the same as in the case of a member of the Legislature, as per Ch. v. Constitutive, Section 2, *Powers*, &c. Art. 5. For security against undue dislocation,—unmodified, and without consent of the dislocative, modified,—see Section 21, *Oppression obviated*.

Enactive.

Art. 7. A Minister is not dislocable by the sentence or decree of a Judge.

Ratiocinative.

Art. 8. Reasons are the following:

Reason 1. It may happen that a Minister,—notwithstanding some offence, for which a Judge Immediate, and the Judge Appellate, his superordinate, might be disposed to dislocate him,—might be fitter for his situation than any other person that could be found. By a Judge, for the forming and entertaining a right estimate of an Administration functionary's aptitude for such his situation,—no more than a small part can be possessed, of the means, which will, at all times, be in the hands of his superordinates in his own line.

Ratiocinative.

Art. 9. Reason 2. By confederacy,—between a Judge Immediate and his superordinate the Judge Appellate,—with any other person, acting,—spontaneously, or at the instigation of either of them,—the part of an accuser, any Administration functionary, how apt soever for his own line of service, might to a certainty be dislocated. In the case of any functionary, in a situation subordinate to that of Minister (Army and Navy subdepartments excepted,) small, it is true, might be the probability of any such confederacy. Not equally so however, by a great deal, in the case of a Minister: for instance, a Minister of the Army, Navy, Foreign Relation, or Finance Subdepartment. Well might it be worth the while of a foreign enemy, to employ,—in engaging by bribery the two Judges to concur in a judgment to that effect,—a sum too vast to be resisted by any ordinary degree of moral aptitude.

Ratiocinative.

Art. 10. Reason 3. Such would be the danger,—supposing the exemption, limited as it is, not established. On the other hand, suppose it established,—small, if any, is the danger of continuance in office, on the part of an unapt Administrative functionary. In the course of a prosecution of the functionary in question, suppose facts such as demonstrate his inaptitude for that same situation made known to the whole community,—his dislocation by a subordinate in his own line, is a consequence, which may be relied on with comparative confidence: especially considering the responsibility of superordinates for their subordinates, as per section 25, *Securities*, &c.

Section XIX.

Subordinates.

Instructional.

Art. 1. I. *Fields of service.* In section 2, *Ministers and subdepartments*, are allotted to those functionaries their several fields of service. In section 4, *Functions in all*, may be seen matter, *enactive* and *instructional*, relative to such functions, as require, all of them, to be exercised for the carrying on the business of every subdepartment. In section 5, may be seen instructional matter in relation to the several *grades*, which,—in quality and number differing or agreeing, as it may happen, in the several subdepartments, compared one with another,—may require to be instituted. To the Legislature, regard being had to circumstances local and temporary, it will belong,—

in each such subdepartment, to give existence to the several *grades* requisite: allotting to each its distinctive field of service, and its functions.

Enactive.

ART. 2. Exceptions excepted,—on each occasion, in the exercise of his several functions, subject is each subordinate functionary, to the exercise given to the *directive* function of his immediate superordinate: subject however to any counter direction, given by any superior superordinate, and so on upwards in the *scale of subordination.*

Instructional.

ART. 3. Exceptions, if any, to this enactment, it will belong to the Legislature to apply, regard being had to circumstances, local and temporary, as well as to the general nature of the service of the subdepartment and the office.

Instructional.

ART. 4. *Statistic function.* Regard had to the matter, ratiocinative and instructional, of section 7, *Statistic function,*—and to the nature of the business of each official situation, of each grade, in each subdepartment,—to the Legislature it will belong to determine—what the Register Books, kept in each such situation, shall be, and in what manner they shall respectively be kept.

Instructional.

ART. 5. *Self-suppletive function.* Regard being had to the ratiocinative matter of Section 6, *Self-suppletive function,*—to the Legislature it will belong to determine—in what official situations, in the several grades, if in any, the power corresponding to this function needs not, and therefore shall not, be possessed and exercised.

Instructional.

ART. 6. So, in regard to the *requisitive function.*

Instructional.

ART. 7. So, in regard to the *melioration suggestive:* and, in this case, the Legislature will not, it is presumed, see any material difference—either in respect of the relative utility, or in respect of the mode of exercise, as between office and office; any more than as between subdepartment and subdepartment.

Enactive.

ART. 8. *Term of service.* Exceptions excepted, and subject to dislocation, simple and modified, as per Section 18, *Dislocable how;* Section 20, *Insubordination obviated;* and Section 21, *Oppression obviated,*—a subordinate of every grade continues in his official situation during his life.

Enactive.

ART. 9. Persons excepted, are—

1. Persons belonging to the *Military,* or say *professional* branch of the service of the Army subdepartment. As to these, see Ch. x. DEFENSIVE FORCE, Section 5, *Term of Service.*

2. Persons belonging to the *Military,* or say *professional* branch of the service of the Navy Subdepartment: as to these, see Ch. x. Section 5, *Term of Service,* and Section 16, *Sea Defensive Force.*

3. Persons engaged in any branch of the service of the subdepartment in question, for a length of time, in any other way determined, and by special designation expressed.

4. Persons therein engaged for the performance of a particular and temporary service: for example, artists, handicrafts, and labourers.

Ratiocinative.

ART. 10. Question. Why, subject to eventual dislocation, give to the term of service in grades subordinate to that of Minister, a duration equal to that of their respective lives?

Answer. Reason. End in view—the affording, in the case of every functionary, the only efficient security which can be afforded against his being,—notwithstanding any the highest degree of appropriate aptitude in relation to the business of his situation,—removed out of it, at any time, by the operation of self-regarding interest, or ill-will, or good-will towards any other person, or erroneous judgment,—in the breast of any individual, in whose hands the *dislocative* power, in the case in question, is reposed. This security consists in the rendering the act of dislocation *judicial,* in contradistinction to *arbitrary.* As to the mode of rendering it judicial, see Section 20, *Insubordination obviated,* Section 21, *Oppression obviated,* and Section 25, *Securities,* &c.

Instructional.

ART. 11. *Attendance.* Regard being had to circumstances local and temporary, as well as to the general nature of the service of the subdepartment and the office,—to the Legislature it will belong, in relation to each office, to examine and determine in what manner application of the general principles and rules laid down in regard to *official attendance* in Section 14, and in Ch. vi. LEGISLATURE, Section 18, *Attendance,* and Section 20, *Attendance and Remuneration how connected,* shall be made to the several subordinate situations.

Instructional. Ratiocinative.

ART. 12. *Remuneration.* In the case of a functionary—in any, and if in any, in what, grade or grades—should any, and if any, what, increase be given, to remuneration, at the expense of the public, on the account of length of *continuance* in the several *situations* separately taken, or any of them?

Answer. No such increase, on this account

in any instance. Reasons for the negative in every case are—

1. Of any mass of emolument that could be appointed for this purpose, the receipt would be prevented by the *pecuniary competition*, in so far as it operated.

2. In so far as such prevention failed to have place, the increase in question would give correspondent increase to public expense.

3. Of no increase in the amount of the reduction made in the expense by increase given to the reductional biddings, does such an arrangement afford any prospect. By a prospect of future contingent emolument at a distance, men in general are not so numerously or so strongly influenced, as by a prospect of emolument of the same value, immediate or near at hand.

By it, no increase would be given to appropriate aptitude: either in a direct way, or in an indirect way, by increase given to competition,

4. The reasons against it present themselves as not differing materially from those which have place, in the case where, instead of continuance in the office, dislocation out of it by resignation has place: that is to say, in compliance with request made by the person himself, as per Section 15, *Remuneration*, Arts. 37, 38.

5. On the occasion of his *biddings* under the *pecuniary competition principle*, he will be at liberty, of course, to stipulate for an eventual provision of this nature, if in his judgment his interest will, by such an arrangement, be preponderantly served.

Instructional. Ratiocinative.

Art. 13. Should any, and if any, what, increase be in this case given to remuneration, at the expense of the public, on the account of *length of service*, in the official establishment, taken in the aggregate?

Answer. Reasons for the negative.

The same as those which apply to the case, where, as per Art. 12, the situation continued in is a *single* situation, separately considered.

Ratiocinative.

Art. 14. Should any, and if any, what increase be in this case, given to remuneration, at the expense of the public, on account of length of continuance *in life*, or say longevity?

Answer. Reasons for the negative.

1. With no material difference, the reasons are those which have place in the case of continuance in the *service*, as per Arts. 12, 13.

2. To those, to whose interior dispositions and exterior circumstances any such distant increase is adapted,—means of producing the effect are open, other than that of a provision, appointed, as in the case here in question, for all persons without exception, as well for those to whose case it is *not*, as to those to whose case it *is*, adapted.

3. If settled by any general rule,—it would, in the case of every individual, be liable to be either too great or too small: too great, the difference being thereby, to the detriment of the whole community, bestowed in waste; or too little, not sufficient for the exigencies of the individual, whatever they were, that were thought fit to be provided for.

4. In no case will the exigencies of the individual be altogether dependant upon the number of years during which his life has continued. But, supposing that it is, the smaller the remuneration he receives at the expense of the public service, the greater is the regard he thus manifests for the good of that same service.

5. The *quantum*, if not determined by any such just and inflexible standard, would be required to be determined by the individual will of some other functionary. In this case, the determination would be much more arbitrary, than when, as in the case of dislocation, the question is—whether a man shall, or shall not, be deprived of the *whole*. The eye of the Public-Opinion Tribunal would not be so jealous and watchful in this case as in that.

6. In this case, misdirected sympathy, real or pretended—regard for the happiness of the few, at the expense of that of the many—would, in the situation of *locating patrons*, be for swelling the demand, and working, to this end, upon the sympathy of others. For the purpose of engaging sympathy in support of excess, a commonly-employed notion is—that a sort of *moral merit* is manifested by the employing time and labour in the service of the public, in contradistinction to the service of the individual. Erroneous and fallacious is this notion. Naturally small and altogether incalculable exceptions excepted,—no more is the good of the public service taken into the calculation of him who gives his *time* and *labour* for what he gets from it, than by him who gives his *goods* for what he gets from it. But, supposing that it is, the smaller the remuneration he receives at the expense of the public, the greater is the regard he thus manifests for the good of that same service.

7. The annexing to official situations remuneration to any greater amount, than, in the estimation of the individual functionary himself, is needful, is, in the breasts of patrons more *likely* to have had self-regard than *benevolence* for its *cause*, and is sure to have a net balance—not of *beneficence*, but of *maleficence*, for its *effect*.

8. It would tend to people the establishment with individuals, who, at entrance, were more advanced in life,—to the exclusion of those less advanced: and, in that way, to give not only useless, but worse than useless, increase to the expense.

9. The less the pecuniary provision exacted by the proposed functionary, at the expense of the public, as necessary for his exigencies, —the greater will be the quantum of that

which he has already of his own: and the greater thereby his pecuniary responsibility, to the purpose of eventual satisfaction, for loss occasioned by him to the service.

10. The greater the provision for eventual addition on the account of length of *age*, the more efficient would be the tendency of the system to people the establishment, with individuals, absolutely or comparatively, destitute of responsibility in the *pecuniary* sense.

Instructional.

ART. 15. *Locable who.* To the Legislature it will belong to consider—in what, if in any subdepartments, and in each subdepartment, in what official situations subordinate to that of Minister, the principles, applied as per Section 17, *Locable who*, to the situation of Minister, will be applicable with beneficial effect; and, in each instance, with what, if any, modifications: regard being had, in particular, to the exemplification given, in Art. 15 of that section, of the groups of talents necessary to the apt performance of the businesses belonging to the several subdepartments.

Enactive.

ART. 16. *Located how.* Exceptions excepted, as per Section 17, *Located how*, Art. 31,—as to every situation subordinate to that of Minister, the initiative function will be exercised by the Minister, the consummative, as per Section 17, Art. 21, by the Prime Minister.

Enactive.

ART. 17. To this case likewise applies the provision made by Section 17, Art. 22 to 29, of the temporary initiative function exercisible in consideration of *distance*.

Enactive.

ART. 18. To this case likewise extends the provision made by Section 17, Arts. 31, 32, for securing the filling up vacancies. For this purpose,—in the present case (so also in that of the day, on which the *location instrument* is delivered in at the Prime Minister's office,) recordation will thereon be made, under the conjunct signatures, of the person by whom *delivered*, and the person by whom *received*.

Enactive.

ART. 19. After the day, on which location, consummated by lapse of time, has place, as per Sect. 17, Art. 31,—the locatee will not be liable to be dislocated by the Prime Minister, otherwise than subject to the limitations attached to the dislocative power, by Section 21, *Oppression obviated*.*

* Note, that the particular securities, given by these two Articles, 18 and 19, should, in Section 17, *Located how*, have been applied to the location of *Ministers* themselves.

Ratiocinative. Instructional.

ART. 20. Question. To what end this security for despatch?

Answer. Reasons—

1. To prevent the superordinate functionary from suffering vacancies to continue unfilled for indefinite lengths of time, and thereby suffering the functions to remain unexercised, and the business to be either put to a stand, or exercised by functionaries, whose responsibility to the Public-Opinion Tribunal is diminished, for want of its seeing in what manner exercise is given by them to the powers, which, in fact, are exercised by them. As to this matter, see Section 17, Art. 31, as applied to the situation of Minister.

Instructional.

ART. 21. On the occasion of the filling up of situations, become, from whatever cause, vacant,—questions which will naturally present themselves for consideration, are the following—

1. The situation—shall it devolve, as of course, upon the Depute permanent of the last occupant? or, upon one, and which,—if there be Deputes permanent more than one?

2. The *qualification examination*, the result of which, as per Section 16, Art. 17, every admission into the list of locables, and thence every admission into the Official Establishment for the first time, has had for its efficient cause—shall it be undergone anew,—by whatsoever candidates, for location in the recently vacated office, there may be?

3. The *pecuniary competition*, if any, which, in the instance of each official situation has, on the occasion of the first location therein made, had place, between the successful candidate and his competitors—shall it, antecedently to the filling up of the vacancy, have place anew?

4. *Promotion*—in what shape, if in any, can it, and shall it, in this case, have place?

Ratiocinative.

ART. 22. Question 1. In this department, in any instance, on a vacancy, shall the situation devolve, of course, upon a Depute permanent, without power to the Minister, to make any other choice?

Answer. *Reasons* for the negative.

1. The obligation which would thus be imposed upon the Minister, would not be compatible with the need there is for the arrangement, by which, as per Section 25, he is rendered in a greater or less degree responsible for the conduct of his subordinates.

2. Unless some particular reason to the contrary presented itself, whether in disfavour of a Depute, or in favour of some locable person other than a Depute,—a Depute would be the person towards whom, in the first instance, the eyes of the Minister, in his character of locator would naturally direct themselves.

Instructional. Ratiocinative.

Art. 25. In this way alone can appropriate provision have place, for the case where the vacancy leaves, in the situation of Deputes, persons more than one; for, in this way alone, — to wit, by the course taken by them respectively as to the affording, or forbearing to afford to him this information,— can the locating Minister obtain, for the guidance of his judgment, such lights as (they being the most instructive which the nature of the case affords) it may happen to him really to desire. In this way alone, can the tutelary influence of the Public-Opinion Tribunal, as applied to the securing of appropriate aptitude on the part of functionaries belonging to the classes in question, be maximized.

Instructional.

Art. 26. Note, that the situations to which the question bears reference, cannot be any others than those which, as per Section 16, *Who*, Art. 15, are situations of *trust*: applied to situations of mere *trust*, the result of the operation would be time and labour expended without use: of any imposition of *chaff*, in the shapes in question, on candidates, the effect might be a reduction more or less considerable in the number of those who would otherwise take part in the pecuniary competition; and thence an increase in the expense.

Instructional. Ratiocinative.

Art. 27. Question 3. The *pecuniary competition*, shall it, in these same cases, or any and which of them, be repeated?

Answer. 1. The result of *pecuniary competition* being, with relation to the locating functionary, in the same manner as the information afforded by *qualification examination*, instructional merely, not obligatory, it is accordingly as completely free from objection, as that has been seen to be.

2. The minimization of the expense,—or at the worst the proof that in that line of improvement the utmost that can be done has been done, is a beneficial effect, which, so long as no preponderant evil has been shown to have place, will suffice to decide in favour of this case.

3. Were any objection to be found that could apply to the admission of the pecuniary competition, it would be removed, by the consideration of the inadmissibility of any comprehensive arrangement, by which, on the occasion of a vacancy, the location in it would be secured to the occupant of the situation next below. To establish as a general rule that, in all branches of the civil, as well as in the two branches of the military service, superiority of grade shall be accompanied with a correspondent superiority of emolument,—would be to establish a system of boundless waste.

4. In this or that station in this subdepart-

ment may be seen a situation of talent, to which, by reason of the smallness of the number of persons possessed of adequate appropriate talent necessary, and the magnitude of the remuneration obtainable in the same line of art and science from service to individuals, —it may be necessary to attach emolument to an indefinitely large amount: next above may be a situation, to which no such superiority of talent being necessary, but which, being a situation of high trust, with or without incidental patronage, might find persons willing to fill it, for the sake of the power and honour, with emoluments in small quantity, or even without any.

Instructional. Ratiocinative.

ART, 28. Question 4. *Promotion.* Consistently with the above-mentioned proposed arrangements,—so far as regards service other than military, can any such system or practice as that indicated by the word *promotion* be with propriety said to have place?

Answer. It should seem not. Reasons.

1. The objections which, as per Art. 22, inhibit the necessitating the location of a Depute into a vacancy created by the dislocation of the Principal, apply also to this case.

2. They do so with increased force. For, be the situation what it will,—evidence, more probative, as to appropriate aptitude of the functionary, will have been afforded by the manner in which he has performed the business of the situation in question,—than any that can in general have been afforded by the manner in which he has conducted the business of another and subordinate situation, the business of which may happen to be in any degree different.

3. To any degree of extent it might happen —that, in the scale of directive power and correspondent superordination and subordination, —in this or that instance, the higher grade would, to persons in general, all circumstances considered, be not so acceptable as the grade next below it in that same subdepartment, or even a grade inferior to the next below it.

4. It would be a negative upon spontaneous migration, and upon the transference of a functionary from a situation in one subdepartment, to a situation, which, though it belonged to another subdepartment, might, on good grounds, be deemed more congenial to his faculties as well as his inclinations; and, if the inhibition were *not* thus all comprehensive,—to reduce it within the most apposite bounds, would necessitate a system of complicated arrangements, such, that the evil, produced by the complication and the addition thereby made to the bulk of the rule of action, would outweigh the utmost possible good producible by it.

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ART. 29. On the nature of the distribution proper to be made, of power grade and emolument, in non-military situations,—the distribution necessary to be made in military situations may, in the way of contrast, throw some light. In the Army service, it is of necessity, that power, and thence grade, should rise in proportion to extent of command, as determined and measured by the number of individual functionaries subjected to it. Confusion and anarchy would be the result, if a functionary having under his command a comparatively larger number—say a thousand men —were subjected, constantly or incidentally, to the directive function of another, having under his command no more than a comparatively smaller number,—a hundred men for example. Superiority of grade and power thus keeping pace of necessity with extent of command,—and in a stipendiary army, emolument to an amount more or less considerable being an essential and inseparable feature,—addition to emolument—an addition keeping pace with addition to grade and power,—was an obvious and *natural* accompaniment, and hitherto has perhaps universally been an *actual* one.

It follows not, however, that, even in that line of service, it is a *necessary* one in the *general* nature of the case, howsoever in the instance of this or that particular political community it may have been rendered so by local and temporary circumstances. Even when not combined with pecuniary emolument, or with the matter of good applied as matter of reward, in any other shape,—*power* has its value; and, as has been shown in Section 17, *Located how*,—is capable of operating, not only as *an* inducement, but of itself, as an *adequate* and effectual one, to the application of time and labour, to courses of operation, to which, but for the inducement, they would not be applied. But, of the adequacy of the mass of inducement in one shape, the consequence is —not *needfulness*, but *needlessness* of inducement in any other shape.

If, in any *one* instance, military subordination has place without being accompanied with emolument in any shape,—this one instance suffices to prove, that, in that line of public service, no such *correspondent* superiority in the scale of emolument, is matter of necessity; and, of such gratuitous service, the examples are numerous and extensive. The result, therefore, appears to be—that, of the degree of correspondency which has hitherto had place, the cause is to be looked for—rather in habit, and the propensity to imitation, than in the necessity of the case.

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The greater the advantage thus possessed by the Depute under a system of free choice, the less the advantage that would be secured to him by securing to him the succession to it, to the exclusion of free choice.

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Answer. To the Minister's having it in every instance in his power to receive the information which would be furnished by the examination in question, there seems no possible objection: by him, in his situation, no sinister advantage could be derived from it. The interest of the public requires that, for the guidance of his judgment, he should be in possession of the completest stock of appropriate information obtainable: and, for his possessing it, this is the most effectual, if not the only adequate means. The only danger to be apprehended, is—his not giving to this instrument of instruction exercise so frequent as the interest of the public would require.

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3. Under a system of free choice,—the whole number, of the persons, whose names have place on the locable list, will, at all times, remain, as under all eyes in general, so in particular under those of the locating Minister. Should any other person, whose name is on that list, present himself to the conception of the Minister as possessing appropriate aptitude in a degree superior to what has been deemed to have place on the part of the Depute—the Minister's responsibility, as above, will operate on him as an inducement to the giving to such more apt candidate the preference.

Instructional. Ratiocinative.

Art. 23. Question 2. The *Qualification examination*—shall it as above, be in any case repeated? If yes, shall the repetition of it be, by the Legislature, ordained to have place in all cases,—or should power *without obligation* be given to the minister for the repetition of it?

Answer. To the Minister's having it in every instance in his power to receive the information which would be furnished by the examination in question, there seems no possible objection: by him, in his situation, no sinister advantage could be derived from it. The interest of the public requires that, for the guidance of his judgment, he should be in possession of the completest stock of appropriate information obtainable: and, for his possessing it, this is the most effectual, if not the only adequate means. The only danger to be apprehended, is—his not giving to this instrument of instruction exercise so frequent as the interest of the public would require.

Instructional.

Art. 24. Note, that, for enabling the locating functionary to give to himself this information,—no additional judicatory, and thence no considerable addition to delay and expense, would be necessary. Under Section 16, *Locable who*, the Qualification Judicatory will be in existence, and periodically at work, for the purpose of giving admission into the *Locable list*. In this state of things, candidates for admission into the vacant situation will, if not prohibited, be at liberty to aggregate themselves to the body of examinees, for the purpose of making manifestation of their respective degrees of appropriate aptitude. Having it thus still in their power, some there will naturally be, who, if they see a probability of thereby eclipsing the Depute or Deputes belonging to the several situations, will, of their own accord, subject their own aptitude to this fresh test; and, to this number, an express invitation, given by the Minister, might have the effect of making addition.

Instructional. Ratiocinative.

Art. 25. In this way alone can appropriate provision have place, for the case where the vacancy leaves, in the situation of Deputes, persons more than one; for, in this way alone,—to wit, by the course taken by them respectively as to the affording, or forbearing to afford to him this information,—can the locating Minister obtain, for the guidance of his judgment, such lights as (they being the most instructive which the nature of the case affords) it may happen to him really to desire. In this way alone, can the tutelary influence of the Public-Opinion Tribunal, as applied to the securing of appropriate aptitude on the part of functionaries belonging to the classes in question, be maximized.

Instructional.

Art. 26. Note, that the situations to which the question bears reference, cannot be any others than those which, as per Section 16, *Locable who*, Art. 15, are situations of *talent:* applied to situations of mere *trust*, the result of the operation would be time and labour expended without use: of any imposition of labour, in the shapes in question, on candidates,—the effect might be—a reduction more or less considerable in the number of those who would otherwise take part in the pecuniary competition; and thence an increase in the expense.

Instructional. Ratiocinative.

Art. 27. Question 3. The *pecuniary competition*, shall it, in these same cases, or any and which of them, be repeated?

Answer. 1. The result of *pecuniary competition* being, with relation to the locating functionary,—in the same manner as the information afforded by *qualification examination*,—instructional merely, not obligatory,—it is accordingly as completely free from objection as that has been seen to be.

2. The minimization of the expense,—or at the worst the proof that in that line of improvement the utmost that can be done has been done,—is a beneficial effect, which, so long as no preponderant evil has been shown to have place, will suffice to decide in favour of this case.

3. Were any objection to be found that could apply to the admission of the pecuniary competition,—it would be removed, by the consideration of the inadmissibility of any comprehensive arrangement, by which, on the occasion of a vacancy, the location in it would be secured to the occupant of the situation next below. To establish as a general rule that, in all branches of the civil, as well as in the two branches of the military service, superiority of grade shall be accompanied with a correspondent superiority of emolument,—would be to establish a system of boundless waste.

4. In this or that station in this subdepart-

ment may be seen a situation of talent, to which, by reason of the smallness of the number of persons possessed of adequate appropriate talent necessary, and the magnitude of the remuneration obtainable in the same line of art and science from service to individuals, —it may be necessary to attach emolument to an indefinitely large amount: next above may be a situation, to which no such superiority of talent being necessary, but which, being a situation of high trust, with or without incidental patronage, might find persons willing to fill it, for the sake of the power and honour, with emoluments in small quantity, or even without any.

Instructional. Ratiocinative.

ART, 28. Question 4. *Promotion.* Consistently with the above-mentioned proposed arrangements,—so far as regards service other than military, can any such system or practice as that indicated by the word *promotion* be with propriety said to have place?

Answer. It should seem not. Reasons.

1. The objections which, as per Art. 22, inhibit the necessitating the location of a Depute into a vacancy created by the dislocation of the Principal, apply also to this case.

2. They do so with increased force. For, be the situation what it will,—evidence, more probative, as to appropriate aptitude of the functionary, will have been afforded by the manner in which he has performed the business of the situation in question,—than any that can in general have been afforded by the manner in which he has conducted the business of another and subordinate situation, the business of which may happen to be in any degree different.

3. To any degree of extent it might happen —that, in the scale of directive power and correspondent superordination and subordination, —in this or that instance, the higher grade would, to persons in general, all circumstances considered, be not so acceptable as the grade next below it in that same subdepartment, or even a grade inferior to the next below it.

4. It would be a negative upon spontaneous migration, and upon the transference of a functionary from a situation in one subdepartment, to a situation, which, though it belonged to another subdepartment, might, on good grounds, be deemed more congenial to his faculties as well as his inclinations; and, if the inhibition were *not* thus all comprehensive,—to reduce it within the most apposite bounds, would necessitate a system of complicated arrangements, such, that the evil, produced by the complication and the addition thereby made to the bulk of the rule of action, would outweigh the utmost possible good producible by it.

Instructional. Ratiocinative.

ART. 29. On the nature of the distribution proper to be made, of power grade and emolument, in non-military situations,—the distribution necessary to be made in military situations may, in the way of contrast, throw some light. In the Army service, it is of necessity, that power, and thence grade, should rise in proportion to extent of command, as determined and measured by the number of individual functionaries subjected to it. Confusion and anarchy would be the result, if a functionary having under his command a comparatively larger number—say a thousand men —were subjected, constantly or incidentally, to the directive function of another, having under his command no more than a comparatively smaller number,—a hundred men for example. Superiority of grade and power thus keeping pace of necessity with extent of command,—and in a stipendiary army, emolument to an amount more or less considerable being an essential and inseparable feature,— addition to emolument—an addition keeping pace with addition to grade and power,—was an obvious and *natural* accompaniment, and hitherto has perhaps universally been an *actual* one.

It follows not, however, that, even in that line of service, it is a *necessary* one in the *general* nature of the case, howsoever in the instance of this or that particular political community it may have been rendered so by local and temporary circumstances. Even when not combined with pecuniary emolument, or with the matter of good applied as matter of reward, in any other shape,—*power* has its value; and, as has been shown in Section 17, *Located how*,—is capable of operating, not only as *an* inducement, but of itself, as an *adequate* and effectual one, to the application of time and labour, to courses of operation, to which, but for the inducement, they would not be applied. But, of the adequacy of the mass of inducement in one shape, the consequence is —not *needfulness*, but *needlessness* of inducement in any other shape.

If, in any *one* instance, military subordination has place without being accompanied with emolument in any shape,—this one instance suffices to prove, that, in that line of public service, no such *correspondent* superiority in the scale of emolument, is matter of necessity; and, of such gratuitous service, the examples are numerous and extensive. The result, therefore, appears to be—that, of the degree of correspondency which has hitherto had place, the cause is to be looked for—rather in habit, and the propensity to imitation, than in the necessity of the case.

Instructional. Ratiocinative.

ART. 30. If to necessity, it is to necessity in another shape—it is to necessity of a local and temporal character—that, in the case of a stipendiary Army and Navy,—more particularly a stipendiary Army,—the customary all-comprehensive correspondence between altitude in the scale of power, and altitude in the scale of emolument, is to be attributed. In

this or that country—whatever, at the time in question, were the proportions,—if an arrangement were expected to be made, for reducing, to a certain amount, the scale of emolument,—the proposed conjunct scales of grade and power remaining unreduced,—*resignation*, to an extent having the effect of *dissolution*—*resignation*, or even *revolt*—might be the consequence.

To the case of non-military functionaries, however, no such danger applies. The consequence is—that, to the complete disregard of *symmetry*—as exemplified in a mutual correspondency in the three scales of grade, power and emolument,—no objection on the ground of *necessity*, has place.

Instructional. Exemplificational.

Art. 31. For elucidation, a glance at an arrangement, made in Russia by *Catherine the Second*, may perhaps, on this occasion, have its use. From the military situations, *analogy* conducted her, or her advisers, to the non-military: and, a scale of superiority and inferiority in rank, with or without correspondent subordination and superordination in respect of exercise given to the *directive* function, was the result. It was borrowed (it has been said) from the practice of some other state or states in her native country—Germany; but, by the conspicuousness of her situation, her name has been stampt upon it.

Be this as it may,—in two respects it was a system of no small importance: beneficial, to a considerable extent, it was and is; maleficial to a much greater extent. Beneficial, inasmuch as it is, in its nature, a vast *source* or *mine* of *hope*. So many situations in the whole Official Establishment,—so many objects of desire, endeavour, competition and hope, open, as at first sight might appear, to the entire of one of the sexes, and thence it might seem, to one half of the whole population. Here, then, was a good, placed within possibility of acquirement, before the individuals in question, considered in their individual capacity. But, by it was maximization given to the quantity of the matter of *good*, applicable in the shape of matter of *reward*, which, by misapplication, operates, and continues to operate, as matter of *corruption*, placing within the hope of every individual of the male sex, the capacity of serving his own particular interest, by contributing, to the sacrifice made of the universal interest, to the particular interest, real or supposed, of the Monarch, by the maximization and perpetuation of arbitrary power in his hands.*

Instructional.

Art. 32. Like as between the *fabricational* and the *emptional* modes of procurement, antagonization, as per Section 4, *Functions in all*, Arts. 45, 46, has place,—so may it as between fabrication on *government* account, by fabricating functionaries, occupying a permanently, and (repeal excepted) *perpetually*, established situation in the official establishment, and functionaries occupying situations not continuing any longer than till completion has been given to this or that individual work. Regard being had to circumstances local and temporary, to the different natures of the services in the several subdepartments, and to the situation in each several subdepartment,—to the Legislature it will belong,—in relation to any such works as may come to be proposed,—to determine, to which of the two modes of procurement to give exercise.

Instructional. Exemplificational.

Art. 33. Of such antagonization, examples are the following—

1. Fabrication, or say construction, of a bridge over a wide and rapid river.
2. — of an under-ground tunnel, especially if under water.
3. — of navigable vessels on the old accustomed plans, for war purposes.
4. — of steam-boats for non-military, as well as military purposes. By survey taken, of the branches of art and science brought to view in Section 16, *Locable who*, other examples might be found.

Instructional.

Art. 34. In this or that instance, what may happen, is—that, where, for the exercise of the *fabricative* function, unpermanent situations may be most eligible,—for the exercise of the *custoditive* and *reparative*, the exercise of permanent functions, in relation to the same subject-matter,—and thus the institution of permanent, and even perpetual situations,—may be necessary, or at any rate, preferable.

Instructional. Ratiocinative.

Art. 35. Under a form of government, of which corruption is the main instrument, and under which, on the part of superordinates, appropriate aptitude is, in a proportion correspondent to the degree of it, rare,—both the inclination and the ability to make apt choice

* This system of arrangement may perhaps serve, in some sort, for the exemplification and elucidation of the distinction and alleged opposition, so often alluded to, between *theory* and *practice:* that is to say, in so far as the notion and the language is anything better and other than a fallacy, employed for the purpose of opposing the shadow of an objection, in the case where none, of any substantial nature can be found. *Analogy* being one of the great instruments in the hand of inventive genius,—and, this being an application of analogy upon a widely-extended scale,—the system of arrangements deduced from it was so far *good in theory*. But, an adequately close and separate examination of particulars—of the particular arrangements comprised under this general head—was wanting; and therefore it is, that it would be found (it is believed) *bad in practice*. For the grounds of this opinion, see Arts. 28, 29, 30.

being accordingly rare,—succession, determined, in ordinary cases, by seniority in *official age* as contradistinguished from *natural age*,—may afford a less bad chance for appropriate aptitude on the part of locatees, than would be afforded by an habitual exercise of the power of unrestrained choice by superordinate locators, in whose instance, to such their power, an unrestrained and irresponsible power of dislocation is conjoined.

Instructional. Ratiocinative.

ART. 36. In such a state of things, succession by seniority, as above,—with correspondent augmentation of emolument, on such terms as above,—is, on several accounts, obviously beneficial to the particular, personal, and sinister interest of the locating Superordinate.

1. It gives proportionable increase to the value of his patronage.

2. It gives proportionable increase to the power and efficiency of *allective** corruptive influence.

3. It gives proportionable increase to the power and efficiency of *intimidative* corruptive influence.

If suspected of want of devotedness to the will, declared or presumable, of the superordinate,—the subordinate, if not dislocated, may, at any rate, without scandal and censure by the Public-Opinion Tribunal, remain unpromoted.

Under a form of government, of which corruption is the essence,—power, through whatever channels it runs, having been converted into poison,—there and thence it is, that for appropriate aptitude, as between choice and *lot*, *lot* would afford the least bad chance.

Instructional.

ART. 37. For obtainment of ordinarily meritorious service,—no need nor use is there for augmentation of emolument, on account of, and in proportion to, seniority in *age*, natural or official: no more than, for the obtainment of commodities good in quality or cheap in price, there is for paying for the same commodities to a shopkeeper who is sixty years old, more money than to a shopkeeper who is but thirty years old, or to a shopkeeper who has been keeping shop for thirty years, more money than to one who has been keeping shop for no more than ten years.

Instructional.

ART. 38. For ordinarily meritorious service,—an individual master may, in this or that instance, have good reason for giving, to a servant of his own, extra remuneration, on the score of length of continuance in life or service. But, it follows not—that, at the expense of the public, a superordinate functionary should have the same power as to the augmentation of the emolument received by a subordinate. Any such power will be sure to be employed for the benefit of the superordinate; and, in case of an antagonization, will be little less than sure to be employed, for that purpose, at the expense, and by the sacrifice, of the interest of the public service.

Instructional.

ART. 39. No need is there for any such augmentation, but for obtainment of extra-merit; and when it is for that purpose that it is given, it is for that purpose and on that account declaredly that it should be given; not on the account of length of continuance either in life or of Government service. *Bounty*, on length in either track, is *prohibition* of extra-merit. The reward that should have been appropriated to extra-merit, a man gets without it: and, in proportion as this has place, labour and self-sacrifice in the endeavour to make proof of extra-merit would be thrown away. See Section 15, *Remuneration*, Art. 37: and Section 25, *Securities*, &c. Art. 13, *Extra despatch*.

Enactive.

ART. 40. Exceptions excepted,—in every subdepartment, dislocable are all subordinates by the Minister,—subject to restrictions, as per Section 21, *Oppression obviated;* also, by the several authorities by which the Minister is dislocable, as per Section 18, *Dislocable how*, Arts. 4, 5, 6; but, for reasons, as per Arts. 7, 8, 9, 10, not by a Judge.

Enactive.

Art. 41. Exceptions are as follows:

1. The several grades in the Military branch of the Army Minister's subdepartment: as to which, see Ch. xi. MINISTERS SEVERALLY, Section 3, *Army Minister*.

2. The several grades in the Military branch of the Navy Minister's subdepartment, as to which, see Ch. xi. Section 4, *Navy Minister*. In relation to these branches of the Administrative service, separate arrangements are made, as per Ch. x. DEFENSIVE FORCE.

Instructional.

ART. 42. Regard being had to circumstances local and temporary,—to the Legislature it will belong to consider and determine, in what cases to give, to a superordinate of a grade inferior to that of Minister, the power of *suspending* a subordinate, on account of *distance* in *place*, until circumstances shall have rendered it practicable to take the decision of the Minister, respecting the exercise of the powers of dislocation, simple or modified: and this, not only for this or that *individual* instance of misconduct in a determinate shape, but, in case of need, for general deficiency of appropriate aptitude in any one of its shapes. See Section 21, *Oppression obviated*. Art. 48.

* (*Allective*) operating by inducement composed of hope of reward expected, or gratitude for reward received. See Section 4, *Functions in all*, Art. 41.

Instructional. Exemplificational.

Art. 43. Examples are—

1. In the territory of a foreign state, suspension of a vice consul by a consul.

2. In a remote part of the territory of this state, suspension of a deputy commissary by a commissary, employed in the *procurement, custody, distribution*, and, incidentally, *sale*, of provisions or war stores, for the use of an army belonging to the state.

3. Or, in war time, in the territory of a foreign enemy.

Section XX.

Insubordination obviated.

Instructional.

Art. 1. The Legislator will, on this occasion, consider, whether, to the *professional* or say *military* branch of the Army and Navy services respectively, any, and if any, which, of the arrangements brought to view in this section and the two next, to wit, Section 21, *Oppression obviated*, and Section 22, *Extortion obviated*, are applicable with advantage.

Instructional.

Art. 2. This section and the three next have for their object the giving,—to functionaries of all grades, as per Section 5, in the exercise of their several functions, as per Section 4, and to the members of the community at large—in a word to *non-functionaries*, in their several capacities of *suitors, inspectors*, and *evidence-holders*,—security against such wrongs as they stand exposed to at the hands of each other; as well as to this branch of the Government service, against such wrongs as it is exposed to at the hands of persons acting in these several capacities.

Expositive.

Art. 3. By a *suitor*, understand—any person, who, in virtue of any business which he has, with a functionary belonging to any subdepartment and acting as such,—has need of any act or forbearance on his part: whether it happen or not to such suitor to attend, or to have need to attend, at the official residence of such functionary.

Expositive.

Art. 4. By an *Inspectee*, understand—any person, whose conduct, in respect of some concern he has in the management of some establishment, or institution, private or public, placed under the inspection of the Minister of some subdepartment in this same Administration department,—is thereby in that respect placed under the inspection of that same Minister; and this, whether the establishment or institution in question is or is not, in the whole or in part, carried on at the expense of the state or any district thereto belonging: and thence, whether such establishment or institution is or is not in any respect subject to the exercise of the *directive* function of such Minister.

Expositive.

Art. 5. By an *Evidence-holder*, understand—any person, considered as having at his command *evidence*, or say *information*, the possession of which is necessary, or in a preponderant degree useful, to any functionary for his guidance in the exercise of any one of his functions: and this, whether the *source* of the evidence be *personal, real*, or *written*:—furnished by the oral discourse of a person, by the appearance of a thing at large, or by the appearance of that particular sort of thing, by the appearance of which, *discourse* in a written form is expressed.

As to *Evidence-holders* and their evidence, see Procedure Code under the head of *Evidence*. Information, in so far as obtained by *inspection*, is obtained by inspection of some source of *real* or written evidence.

Expositive.

Art. 6. By *insubordination*, understand hereinafter—any act whereby wrong is by a *subordinate functionary* done to the public service, by means of wrong done to some superordinate or co-ordinate functionary, in such sort that disturbance, in some shape or other, is given to the exercise of his functions.

Expositive.

Art. 7. By *quasi-insubordination*, understand hereinafter—any act whereby wrong is done, by a suitor, an inspectee, an evidence-holder, or an individual at large, to the public service, by means of disturbances given to the exercise of some functions of some functionary as above.

Expositive.

Art. 8. From *insubordination, quasi-insubordination* differs in this particular. The suitor, inspectee, or evidence-holder, not occupying any official situation under Government,—any wrong done or endeavoured to be done by him in the business of the subdepartment, cannot be obviated by dislocation, as in the case of a functionary, occupying, as such, an official situation under Government.

Expositive.

Art. 9. To the exercise of any function of any functionary, *disturbance* is capable of being produced in any one of the modes following—

1. By *personal annoyance*, or say by *vexation*, corporal or mental, in such sort that, for a length of time more or less considerable, it is rendered either utterly impracticable, or to a degree more or less considerable, less easy, for him to act with due effect in the exercise of such his function. As to the several modes of vexation, corporal and mental, see the Penal Code.

2. By operation, performed on some *other* person or some *thing*, in such sort that the

exercise of the function in question is rendered impracticable, or less easy as above.

3. By non-compliance with some mandate or requisition which, in virtue of his official situation, the functionary is empowered to address, and does accordingly address, to the *disturber*, as above.

Ratiocinative.

ART. 10. Under this Constitution, whatsoever be the establishment, institution, or foundation,—and howsoever *private*,—in no way can any interest which is not sinister be served, by screening it from public inspection, performed through the medium of the authorities hereby for that purpose constituted: always understood that, in relation to such establishment, institution, or foundation, the *inspective* function is not, in the hands of those same authorities, accompanied by the *directive* function, or by the dislocative function, simple or modified.

Ratiocinative.

ART. 11. If altogether exempt from inspection, as above,—any establishment, and, by means thereof, the founder or founders and their successors, might give an effective force to regulations repugnant in any degree to the greatest happiness principle, and to the ordinances of the state. For, no otherwise than by appropriate application of the matter of punishment and reward, can effective force be given to any imaginable regulation. But, whosoever, for the creation, preservation, or extension of any institution or establishment, attaches a fund to the support of it, makes to that purpose a correspondent application, of the matter of reward, to the purpose of securing, on the part of all who share, or look to share, in the reward, conformity to the regulations, whatsoever they may be, by which the act of foundation is accompanied or followed: of the matter of reward, application is thus made avowedly and under that name: of the matter of punishment, not less effectually, though not under that name: for, of the various modes of punishment, subtraction of the matter of reward is *one;* and, whoso, subject to any such subtraction, gives his acceptance to the reward, renders himself thereby subject to the correspondent punishment. And in this way it is,—that, under the wing of any dominion, a dominion still more powerful than itself, is, but for appropriate precaution, liable, at any time, and anywhere, to be established.

Ratiocinative.

ART. 12. If, under a representative democracy, any secret establishment or institution is thus, in a greater or less degree, pernicious and dangerous, and at the best needless and useless,—in a still greater proportion is it salutary, supposing it capable of subsisting under an absolute monarchy, or aristocracy, or a mixture of both: for as, under such a form of Government, no open security can the people have against the most excruciating tyranny,—thence it follows that, if they have any, it must be a secret one: and by the mere suspicion, even supposing it groundless, of the existence of any such institution, some check, how inadequate soever, may be applied, to a tyranny to which there would otherwise be none.

Tyranny would be banished from the earth, could it but once be sufficiently known, that rest is everywhere banished from the pillow of the tyrant.

Expositive.

ART. 13. Of establishments or institutions, perpetual or temporary, which, being, in whole or in part, maintained at the expense of individuals, singly or in numbers, or of bodies corporate or unincorporated other than the Government,—may, as above, present an adequate demand for their inspection by the Minister to whose subdepartment they respectively belong, instances are as follows:

1. *Indigence Relief* and *Health* subdepartments. Establishments or Institutions, having for their object or say end in view, real or professed, the relief of indigence, absolute or relative, with or without labour: for example, 1. Almshouses: 2. Workhouses: 3. Hospitals.

2. *Education and Health* subdepartments. Establishments or Institutions as above, having for their object or end in view, real or professed, the *instruction* of individuals, of whatever age, in respect of any *beneficial acquirement*, on any part of the field of art and science.

3. *Health* subdepartments. 1. Hospitals. 2. Dispensaries. 3. Medical Museums. 4. Lectureships.

Expositive.

ART. 14. By a subordinate, in relation to a superordinate of his of any grade, an act of insubordination is capable of being committed in any of the three modes or shapes, in which, as above, an act of *quasi-insubordination* is commissible, as above, by a non-functionary, in relation to a functionary.

It is moreover commissible by non-compliance with any direction, delivered to him by the superordinate in the appropriate exercise of his *directive function*.

Enactive.

ART. 15. Remedies in the case of *quasi-insubordination*.

In a case in which the functionary, to the exercise of whose function disturbance is offered, is a Minister,—the *physical* remedies applicable on the spot will be the same as those applicable on the spot by a Judge Immediate, in the case of the like disturbance to the exercise of his functions: as per Ch. xii. JUDICIARY COLLECTIVELY, Section 11, *Sedative function*.

Instructional.

Art. 16. For prevention of disturbance producible in any other less effective mode, will be provided an appropriate set of *rules*. Title of these rules—" Rules *for the deportment of suitors, and other non-functionaries present on the occasion of exercise given to the functions belonging to any of the several official situations:*" or, for shortness, *Rules for the deportment of non-functionaries* in their intercourse with functionaries, in the several Administration subdepartments. If, by the circumstance of any particular subdepartment, any special alteration from the tenor of the above general rules shall appear to be called for,—such alteration will accordingly be made, to wit, by omission, addition, or substitution, as the case shall have been deemed to require.

Expositive.

Art. 17. These Rules of deportment on the part of suitors towards functionaries, will consist of such of the Rules styled *Rules of good behaviour, good manners, good-breeding*, or *decorum*, as apply to the species of superiority which, in this case, has place, and is necessitated by the nature of the case.

Instructional.

Art. 18. To these Rules execution and effect will be given, in the *first* place, by the power of the *popular* or say *moral sanction*, as exercised by such persons, to whom, in the capacity of *Inspecting* members of the *Public-Opinion Tribunal*, it shall have happened, by presence or otherwise, to have had cognizance of the facts.

Instructional.

Art. 19. On the occasion of the drawing up of those rules, the legislature will consider and determine—whether, in the case of any, and if any, of which of them, for the better securing of execution and effect thereto, the force of the *legal* sanction shall in any shape be applied; as, for example, by moderate penal fine or imprisonment, or rather, for a first offence, exclusion or suspension from the right of being present in the character of Inspecting Visiters, as per Section 21, *Oppression obviated*, and Section 25, *Securities for appropriate aptitude*.

Instructional.

Art. 20. In this as in other cases, on the character of the system of *Judicial procedure* will depend, in considerable degree, whether,—in the case where the *legal* sanction, with the judiciary authority for giving execution and effect to it, shall be employed,—good or evil shall be preponderant: if in its several shapes of *delay, vexation*, and *expense*, the mass of evil opposite to the *collateral* ends of justice be minimized,—the advantage, of making application of this power to the purpose and the occasion, will be much more unquestionable, than where the magnitude of it is left to stand, even at the very lowest pitch at which it has hitherto been customarily placed under the best constituted Governments.

Enactive.

Art. 21. For remedy, in case of non-compliance on the part of an *Inspectee*,—a Minister, acting within his subdepartment,—subject to the operation of the securities against oppression and depredation as per Section 21,—has power, in case of necessity, to employ physical force: in the first place upon *things*, and, if by resistance rendered necessary, against *persons*.

Enactive.

Art. 22. For remedy, in case of non-compliance on the part of an *Evidence-holder*,—a Minister, acting as above, and subject as above, has the same powers, as, by Ch. vi. Legislature, Section 27, *Legislation Inquiry Judicatory*, are given to the Legislature; and by Ch. xii. to Immediate Judges: for details, see the Procedure Code.

Enactive.

Art. 23. Against *insubordination*, committed in any one of the shapes, in which, as above, *quasi-insubordination* is commissable,—remedies employable are the same as in that case.

Instructional.

Art. 24. To the Legislature it will belong to consider and determine,—to what *grades*, if any, subordinate to that of Minister, shall, in the several subdepartments, be imparted the benefit of the *securities* hereinafter afforded against *disturbance* and *non-compliance*, on the part of *Suitors, Inspectees*, and *Evidence-holders*.

Enactive.

Art. 25. In case of non-compliance, on the part of a subordinate, in relation to a *direction* delivered in the exercise of the *directive* function belonging to his office,—to every superordinate belongs, subject as above, to the provisions of Section 21, *Oppression obviated*, the power of *suspension:* also, to the appropriate superordinate, the additional powers of unmodified dislocation, transference to an equal or inferior grade, or stoppage of promotion: and in each case exercisable either definitively or for a time. For remedy to mis-exercise of these several powers, see Section 21, *Oppression obviated*.

Section XXI.

Oppression obviated.

Instructional. Expositive.

Art. 1. Relation had to the business of the several departments of the *Official Establishment*, and to that of the *Administrative* Department in particular,—persons at large require, on various occasions, and for various purposes, to be distinguished from each other, into *non-functionaries* and *functionaries:* so also

functionaries into those who, in relation to one another, are *superordinates*, *subordinates*, and *co-ordinates*. By the constitution of human nature, persons of all these several classes stand exposed to suffer *wrong* in all shapes, from human agency: at the hands of every other, each one: and, through the medium of such private wrong, or in a direct way, so does the public at the hands of every one.

Instructional. Expositive.

ART. 2. Correspondent to wrong done *to* a functionary, and thence to the public service,—if *by* a functionary inferior to himself, is, as above, Section 20, *insubordination:* if by a non-functionary, *quasi-insubordination:* correspondent to wrong done *to* a functionary *by* a functionary superior to himself, or *to* a non-functionary *by* a functionary of any grade, by means of the power belonging to him as such,—is *oppression*. In the case where, and in so far as, *oppression* has *profit* for its fruit, it is *extortion:* profit, pecuniary or quasi-pecuniary—money or money's worth.

Instructional.

ART. 3. Against *insubordination*, provision is made in the section last preceding: against *oppression* at large, in this present section: against oppression in the particular shape of *extortion*, in the next.

Instructional. Expositive.

ART. 4. Take any human act whatsoever, —in so far as oppression is the result of it, the agent is an *oppressor*, the patient an *oppressee*.

Persons, who, on the present occasion, are considered in their capacity of becoming *oppressors*, are—functionaries belonging to the Administration Department: all persons so situated, and no others.

Persons liable to be rendered *oppressees* are —I. non-functionaries; II. functionaries: *non-functionaries*, in their several capacities of, I. suitors; II. inspectees; III. evidence-holders—(as per Section 20, *Insubordination obviated*, Arts. 3, 4, 5, by all functionaries;) functionaries, by their respective superordinates.

Oppressed by a superordinate, any subordinate functionary is liable to be, in any one of three ways: to wit, 1. in his capacity of suitor, having need of intercourse with the superordinate, in the same manner as a non-functionary; 2. by abuse of the superordinate's *directive* power; 3. by abuse of the superordinate's *dislocative* power, simple or modified, as per Section 18, *Dislocable how*, Arts. 1, 2.

Abuse of power may be either *positive* or *negative: positive* is committed by mis-exercise; *negative*, by non-exercise, where exercise is due: *non-user* is among the terms employed in English-bred law, and is applied to *power;* and, still more extensively, to *right* at large.

Expositive. Exemplificational.

ART. 5. Follows exemplification in the above-mentioned four several cases.

CASE I. Alleged oppressee, a *suitor*. Examples—

1. On the part of the alleged *oppressor*, refusal or omission, to render an official service, on the occasion in question, due to him.

2. Needless suffering, inflicted on him on any such occasion, in the shape of *delay*, *vexation*, or *expense*.

3. Needless and ungrounded contempt or disrespect, expressed in relation to him; to wit, whether by discourse or deportment.

4. Any other wrong or wrongs, which the suitor may prefer submitting to at his hands, rather than be subjected to sufferings such as the above.

5. Wrongs, exercisible by contravention of the *Rules of Official Deportment*, as per Section 20, *Insubordination obviated*.

Expositive. Exemplificational.

ART. 6. CASE II. Oppressee, an *inspectee*. Examples—

1. Useless or needless suffering, in any shape, inflicted on him, on occasion of the process of inspection: of whatsoever nature the subject-matter of it, if a *thing*, may happen to be: the subject-matter, if *one*, damaged: subject-matters, if *divers*, damaged or thrown into confusion.

2. *Profit-extinguishing disclosure:* disclosure made—of a beneficial process in manufacture, or plan of management in commerce, not obtained without expenditure of time and capital, but productive of, or pregnant with, net profit, the amount of which would be lessened, or the source of it altogether dried up, were the same process employed by other persons, by whom the expenditure had not been shared: the disclosure being accordingly followed by extinction of profit, as above, in consequence of such competition.

For other examples, see above, Art. 5.

Expositive. Exemplificational.

ART. 7. CASE III. Oppressee, an *evidence-holder*. Examples—

1. The evidence, *personal* evidence, *orally* to be elicited: for the extraction of it, the *evidence-holder* subjected to forced attendance from distant parts, with uncompensated expense of journeys to and fro and demurrage.

2. The evidence, *epistolarily*, to be elicited: for the extraction of it, the *evidence-holder* subjected to the obligation of furnishing more or less lengthy written answers, to correspondently long strings of questions.

3. The evidence, *real* evidence: for the obtainment of it, the *evidence-holder* subjected to the burthen of a more or less protracted course of search, inspection, and examination, followed by the burthen of reporting the result: also travelling, the source of the evidence being immoveable, for instance, an edifice or tract of land; or if moveable, bringing it or sending it to the official residence.

4. The evidence *ready written:* necessary to the exhibition of it, a more or less protracted

course of search, examinations and methodization. In each case, the evidence either useless or needless: or the burthen to the individual not adequately compensated by payment to him, or benefit to the public.

Expositive. Exemplificational.

Art. 8. Case iv. Oppressee, a *functionary*. For examples of oppression, which functionaries at large are exposed to at the hands of functionaries at large,—see those which non-functionaries are exposed to, as per Arts. 5, 6, 7. For examples of oppressed*ness* by abuse of dislocative power, see the several modes thereof, as per Section 18, *Dislocable how*, and the articles which here follow.

Note, that by oppression at large, if not sufficiently obviated, the effects of dislocation, dishonour excepted, are not incapable of being produced: rather than endure any longer the vexation he is subjected to, the resignation of the oppressee is tendered and accepted. On the occasion of the oppression, this result may have been in contemplation, and have operated as the final cause of it.

Expositive.

Art. 9. So much for the *disorder*—its *shapes, authors*, and *patients:* now as to *remedies*.

Case i. Oppressee, a *non-functionary*. Remedies applicable in this case are either—1. generally applying; or 2. specially applying. By the *generally applying*, understand those which apply to oppression, *by* whomsoever, *on* whomsoever, exercised, and are furnished by the Penal Code, and applied by the judiciary authority. By the *specially applying*, understand those which apply to oppression, in no other case than where *functionaries* are the *oppressors*, and the authority by which the remedy is applied is—*not* the Judiciary authority, otherwise than as called in and employed in aid of the Administrational.

Expositive.

Art. 10. The *specially applying* remedies, are either—1. *directly applying;* or 2. *indirectly applying*. By the *directly applying*, understand those which are constituted in the ordinary mode, to wit, by prohibition, and are specially applying no otherwise than because, instead of those alone who belong to the Judiciary Department, the functionaries by whom they are applied, are those who belong to the Administration Department, with or without aid from those belonging to the Judiciary. By the *indirectly applying*, understand such as are applied otherwise than by prohibition and judicature, applied, as above, to the abusive act. They will be seen to consist chiefly in the applying to this purpose the power of the *Public-Opinion Tribunal*,—and for the use of that as well as to the legal tribunals, providing appropriate *evidence* and means of *publicity*.

Enactive.

Art. 11. Follow, in the several cases, the *directly-applying* remedies.

Case i. Alleged oppressor, a functionary of a grade *inferior* to that of Minister.

Power, in this case, to the alleged oppress*ee*, to prefer his demand for redress, either to the ordinary Judicatory,—or to the Minister, to whose situation that of the alleged oppress*or* is subordinate.

Enactive.

Art. 12. In so far as is necessary for giving execution and effect, to redress, at the charge of the alleged oppressor,—invested, in this case, is the *Minister*, with the powers and obligations attached to the situation of a Judge immediate, with right of appeal, on both sides, to the Judge appellate.

Enactive.

Art. 13. As in the case of the ordinary permanent Judicatory,—power and obligation to the Judge of this occasional and transient Judicatory, to administer *satisfaction*, in whatever shape it is provided by law, in case of oppression at large, for damage, in whatever shapes resulting, from the oppression; and this, whether to the oppress*ee*, or, through him, to any other person.

Enactive.

Art. 14. So likewise to subject the oppressor to dislocation, *simple* or *modified*, as per Section 18, *Dislocable how*.

Enactive.

Art. 15. Of his own motion,—or at the instance of the complainant, or the party complained against,—power, in this case, to this same special Judge, to *call in*, or say *invoke*, the assistance of the *Judge immediate*, of the *sub-district*, within which the official residence of the functionary complained against, is situated.

Ratiocinative.

Art. 16. Reasons, purposes, and uses of such *invocation*. Examples—

1. Obtainment of evidence, at the hands of *evidence-holders*, in relation to whom the special Judge has no *evidence-elicitation power*.

2. Avoidance of the appearance, or suspicion, of undue *favour* or *disfavour*.

3. Increase given to the *publicity* of the proceedings: thence, to the security against any deficiency of appropriate aptitude, in any particular, on the part of the special Judge.

Enactive. Ratiocinative.

Art. 17. By the Judge *invoked*, as above, —as well as by the Judge invoking,—will in this case be exercised the several *elementary Judicial functions*, as per Ch. xii. Section 9, *Judges' Elementary Functions:* the ultimate *imperative* function excepted. This will be

exercised by the special Judge alone: REASON, *responsibility undivided.*

Enactive.

ART. 18. CASE II. Alleged oppressor, a *Minister*. Special Judge in this case, the *Prime Minister*. Power of invocation in this case, as per Art. 15.

Enactive.

ART. 19. CASE III. Alleged oppressor, the *Prime Minister*. Special Judicatory in this case, the *Legislation Penal Judicatory*, as per Ch. vi. Section 28.

Enactive.

ART. 20. *Indirectly-applying* remedies, in these cases, are as follows:

1. *Rules of deportment for functionaries:* analogous to those applied, as per Section 20, *Insubordination obviated*, Art. 16 to 20, to the situation of non-functionaries having need of official intercourse with a functionary.

In the case of the *Army* and *Navy* sub-departments, respectively, whether any, and what variation should have place, the Legislature will consider and determine.

2. Enumerated cases for *secrecy* excepted, *publicity* of all official intercourse between functionaries and non-functionaries. For architecture adapted to these two opposite purposes, see Section 26, *Architectural arrangements.*

3. In the *audience chamber* of each Minister, and that of each functionary his subordinate, of every grade,—in situation and characters conspicuous, suspended by the side of the table of *Rules of deportment for suitors*, &c., a table exhibiting the *Rules of deportment*, as above, for *functionaries*. In many points, the two sets of rules will coincide: in some points, they will diverge.

4. As in the proceedings of the Judicial Department, as per Ch. xii. Section 14, and Ch. xxi. JUDICIARY REGISTRARS, Section 5, *Minutation how*,—as in the public, so in the secret audiences, minutation and registration applied to everything that passes. See Ch. vi. Section 21.

5. As in the Judiciary Department, so in this,—securities the same for *clearness, correctness*, relative *completeness*, and thence *undeceptiousness*, in the *evidence* so elicited.

6. As in every *justice chamber*, so in every *administration functionary's audience chamber*, —the sort of *register* styled an *Incidental Complaint-Book*, as per Ch. xii. Section 18, will be ready for the reception of any complaint, which, at the charge of the functionary,—the suitor, inspectee, or evidence-holder, as the case may be—may think fit to make: or, at the charge of the non-functionary, the functionary.

7. Thus, as in judicial business, as per Ch. xii. JUDICIARY COLLECTIVELY, and Ch. xvii. JUDICIAL INSPECTORS, and the correspondent Procedure Code,—so in administration business,—to the hitherto customary, ungrounded, and *arbitrary* mode, a determinately and *judicially-grounded* mode of procedure, is throughout, substituted.

Instructional. Expositive.

ART. 21. As to the above *Rules of deportment*, for the more effectual comprehension of them, take the analysis following:

Rules.—1, of purely self-regarding prudence; —2, of extra-regarding prudence;—3, of negative effective benevolence;—4, of *positive* effective benevolence:*—under one or other of these four heads, may be ranked every rule, by the observance of which increase can be given to the sum of human happiness: call them *Rules of Ethics*,† or say, *Morality*, rightly understood.

Instructional. Expositive.

ART. 22. Of these four sets of rules, the aggregate may again be distinguished into two groups: the first, composed of those, in regard to which, for securing observance to them, the sanctions belonging to the *Penal Code* may be employed with advantage: the others, of those in regard to which those same sanctions cannot be, or at any rate, at the time in question have not been, so employed.

Instructional. Ratiocinative.

ART. 23. Rules, not thus advantageously enforceable as between individual and individual taken at large, may be thus enforceable, when applied to the conduct of persons, brought into a state of constant and inevitable contact with each other, by their particular correlative situations. The reason is—that, in this latter case, a *wrong*, which, as between persons capable of keeping themselves separate from each other, would be of little or no importance, may, by means of such constant and inevitable contact, be rendered an instrument of constant and intolerable annoyance.

Instructional.

ART. 24. Between the respective fields of these two sets of rules, the proper place of the line of demarcation depends, in no small degree, upon the state of the system of *judicial procedure*. The less the quantity of factitious delay, vexation, and expense, engendered by it, the less will, in this case, be the evil of the remedy which they are respectively calculated to administer, and the slighter the disease to

* Note that, to express what is here expressed by effective benevolence, the single word *benevolence* would not have sufficed: for, by benevolence alone, no contribution can be made to happiness: nor would *beneficence* alone, because beneficence may, to any extent, be exercised, without a particle of *benevolence:* by pecuniary expenditure it accordingly is thus exercised, and to an amount corresponding to the quantum of such expenditure.

† More significant than *Ethics*, were it equally familiar would be another appellation of Greek origin, *Deontology*.

which application may be made of it to advantage.

Instructional.

Art. 25. In the Procedure Code belonging to this present Constitutional Code, evil in this shape is endeavoured to be minimized. In the codes of several nations, and in that of England in particular, the endeavour has been rather to maximize it, and has been but too extensively successful: expense has been maximized for the sake of the profit, official, and professional, extractible out of it: delay and vexation increased for the maximization of the expense.

Instructional.

Art. 26. As for the rules of purely *self-regarding prudence, extra-regarding prudence* and *positive effective benevolence*,—they belong not to the present occasion. As to the rules of *negative effective benevolence*,—many, which, under a system directed to the ends of justice, might be enforced with advantage,—and, in domestic procedure, with a success proportioned to the degree of appropriate aptitude, on the part of the domestic legislator and judge, actually are enforced with advantage, —must, under a procedure-system directed to ends opposite to those of justice, be left unenforced, and *wrong* in the several corresponding shapes left unopposed, and by any force other than that of the *popular* or *moral* sanction, unrepressed.

Instructional. Exemplificational.

Art. 27. The distinction thus brought to view has not altogether escaped the observation of the authors of the existing codes. The service of the two military subdepartments, —those, to wit, of the Army and Navy Ministers,—being that in which the contact between functionary and functionary is, in the highest degree, close and constant,—and moreover, the quantity of mischief liable to be produced to the *public service* by mutual and unredressed wrongs, greatest,—endeavours, more or less successful, have, in the correspondent parts of the aggregate code, been directed to the repression of such comparatively petty wrongs, the repression of which was not, as it seemed, called for by any such necessity, in the case of any other subdepartment.

Instructional.

Art. 28. Take, for example, in English practice, an ordinance, to which, for the purpose in question, a place is given in a *Monarchically-established Code*, styled the *Articles of War*, which,—with the addition of the annually enactive *Parliamentarily-established Code*, styled the *Mutiny Act*,—constitutes the whole body of the *regulations*, by which the stipendiary functionaries belonging to the Army are governed.

It is comprised—the whole of it—this same *Code of good manners*, in one article—Article 30th—of those same Articles: and in in these words—

"Whatsoever commissioned officer shall be convicted before a General Court-Martial, of behaving in a *scandalous infamous* manner, such as is unbecoming the character of an officer and a *gentleman*, shall be discharged from our service: Provided, however, that in every charge preferred against an officer for such scandalous or unbecoming behaviour, the *fact*, or *facts* whereon the same is grounded shall be clearly specified."

Instructional. Ratiocinative.

Art. 29. In and by this exposition, such as it is, is plainly enough meant to be expressed, the substance of the above-mentioned *rules of deportment*, as applied to the class of functionaries therein mentioned. To the ordinary judicatories,—in their stationary situations, and with their endlessly-protracted courses of procedure,—of no such indeterminate and unparticularized rules could the enforcement have been committed, with any sufficiently-grounded prospect of preponderant advantage. To the extraordinary judicatory, to which, as above, the enforcement of them is actually given, yes: for, as in other countries, so even in England, whatsoever, if any, may have been the imperfections in the organization of that extraordinary judicatory, to no ends other than those of justice can the procedure system attached to it ever have been directed. Never, like the system, organized for and by the ordinary judicatories,—never has it been directed to ends diametrically *opposite* to the ends of justice: maximization, to wit, of the wealth, power, and reputation of lawyers, official and professional, at the expense, and by the sacrifice of the comfort and security, of the rest of the community.

Instructional.

Art. 30. If, in the practice of these military Judges, instances of a contravention of the rules of justice are ever produced, it is by favour or disfavour, by hope or fear derived from distant sources: it is not by masses of fees, the enormity of which, as in English non-military judicature, rises in regular proportion to the enormity and constancy of the habit of contravention, as applied to the very rules, the contravention of which the judges in question pretend to be endeavouring to prevent.

Instructional.

Art. 31. Inadequate as is the above-exhibited skeleton, in the character of a substitute to a *Code of good manners*, such as legislation, in its present less immature state, might be capable of providing,—there seems little doubt of its having answered its purpose in practice with a considerable degree of efficiency. Of such a result the smallness of the number of

prosecutions that have ever occurred under these same *Articles of War*, compared with the length of time, and the number of the persons subject to them, affords no inconsiderable presumption. True it is—that, by the unwieldiness of the judicatory in this case,—and, in particular, the difficulty of getting together the required number of judges—the force of the presumption is somewhat lessened: but, in addition, comes the general propriety of the deportment, on the part of the functionaries of this class, as compared with that of individuals of correspondent rank, taken at large.

Instructional. Ratiocinative.

ART. 32. As to the two corresponding *Codes of good manners* here spoken of, neither of them can be inserted here. Reasons are as follows—

1. For any such minute details, the Constitutional Code is not, it should seem, the proper place.

2. Scarcely is the art-and-science sufficiently in advance for the exhibition of them.

3. To a more or less considerable extent, variations would be indicated, by the diversity of sentiments, manners, and customs, in different regions and communities.

4. As the public mind matures itself, the matter of *private*, will be removed into the field of political, *deontology*.*

Instructional.

ART. 33. Of the comparatively broad features, by which, to the purposes of *satisfaction* and *punishment*, at the hands of the *ordinary* judicature, delinquency, in its coarser and most prominent shapes, is characterized,—no adequate portrait—no adequate set of definitions—is as yet to be seen in the code of any nation: till these have been settled and delineated, as in the Penal connected with the present Constitutional Code, they are endeavoured to be,—scarcely, in the minds of public men, will appropriate aptitude be sufficiently ripe, for the adequate performance of the still more delicate and difficult task, brought to view as above.

Enactive. Instructional.

ART. 34. CASE II. Oppressee a *functionary*. He can be none other than a subordinate functionary; to wit, a subordinate, belonging to the same subdepartment, and subject to the power exercised by the exercise of his superordinate's directive function.

In this case, in respect of the need there will be for the subordinate to hold intercourse with the superordinate,—the relation of the situation of the subordinate to that of the superordinate, is, as per Art. 4, the same as that of a suitor to any functionary with whom he has business. Remedies, direct and indirect, will accordingly be the same.

Enactive.

ART. 35. So likewise, when the power, the abuse of which is alleged, is the power exercised by the exercise of the *directive* function.

Enactive. Instructional.

ART. 36. Remain, the remedies to the abuse of the power exercised by the exercise of the *dislocative* function.

1. *Directly* applying remedy in this case, right of complaint exercisible as per Articles 12 to 19; but, as to satisfaction by *relocation*, the power, if exercised by a Judge ordinary, recommendatory only—(as will be seen)—not *imperative*.

2. *Indirectly* applying, the same in this case as in *that*; but, in this case, with the addition of the preliminary fixation, of the authorities, by which alone the several modes of dislocation shall respectively be exercised.

Enactive. Ratiocinative.

ART. 37. For the purpose of hearing the complaint, exceptions excepted, the Judicatory employed will be that of the metropolis.

Reason. In that situation will naturally be found the best instructed section of the *Public Opinion-Tribunal*, and thereby the most efficacious security against abuse.

Instructional. Ratiocinative.

ART. 38. But, for saving expense, vexation and delay, or even for avoidance of partiality, and thus misdecision or nondecision,—it may happen that a Judicatory, preponderantly preferable upon the whole, may be found in some other subdistrict. Consideration had of all circumstances, permanent and temporary,—to the Legislature it will accordingly belong to determine, what if any exceptions to establish: and whether *actual*, by exercise of its own immediately applying authority, or *eventual* by the giving powers to that effect to the *Prime Minister*, or the *Justice Minister*, or recommending the exercise of such powers to succeeding *Legislatures*.

Enactive.

ART. 39. For the formation of the decrees of such dislocation Judicatory, optional courses are the following—

1. Confirmation of the act of dislocation, simplified or modified.

2. Declared forbearance to exercise the *opinative* function.

For the distinction between the *opinative* and the *imperative* function in a judicial sense, see Ch. xii. JUDICIARY COLLECTIVELY, Section 9, *Judges' Elementary functions*.

3. Recommendation given to the dislocating functionary,—to substitute, to the mode of dislocation exercised, dislocation in some other mode, mentioning *what*.

* [*Deontology*] From the Greek—the branch of art-and-science, having for its subject-matter that which, on each occasion, is *proper* to be done.

Ratiocinative.

Art. 40. Uses of such recommendation are the following:

1. By the prospect of it, and the publicity attached to the procedure,—affording a security against ungrounded, and insufficiently grounded, and thence oppressive, dislocation.

2. Affording to the dislocatee the means of clearing his reputation from ungrounded imputations.

Ratiocinative.

Art. 41. The due exercise of the functions of a functionary would be liable to be much impeded, if so it happened that he were unable to give exercise to them without the instrumentality of a subordinate regarded by him as relatively unapt: and, by the apprehension of seeing himself laid under this difficulty by this or that subordinate of his, his operations might, to an indefinite degree, be obstructed.

Enactive. Ratiocinative.

Art. 42. But to no such recommendation is any obligatory effect attached.

Reasons. The inconvenient effects of which such attachment might be productive:—too obvious to need description, too various and numerous to admit of description here.

Enactive. Ratiocinative.

Art. 43. In every such case, to the Minister it will belong, either to give effect to such recommendations, as per Art. 39, or to adjust the matter by exercise given to the *transferential* function; that is to say, applied—either to the subordinate functionary, or to the superordinate, as the case may appear to require.

Enactive.

Art. 44. Simply *dislocated*, a functionary, of a grade *subordinate* to that of a Minister's, cannot be, by any person other than the Minister of his subdepartment, the Prime Minister, or the Legislature.

Enactive.

Art. 45. Nor *stopped* in the course of promotion.

Enactive.

Art. 46. Nor, without his consent, *transferred*, either *definitively* or *temporarily*, to an office, either of an inferior, or of the same, grade, or even of a superior grade.

Enactive. Ratiocinative.

Art. 47. *Suspended* a functionary may be, either by his *immediate* superordinate, or by his superordinate of any *superior* grade.

Reasons. 1. Responsibility of superordinates for subordinates, as per Section 25, *Securities*, &c.

2. Distance of the spot, on which, at the moment of supposed misconduct, the subordinate happens to be, in such sort that, unless the act of suspension could be exercised before there was time for its being exercised by the Minister, irreparable damage might ensue. See Section 19, *Subordinates*, Arts. 41, 42, 43.

Enactive.

Art. 48. Follows here an *indirectly* operative remedy. Exceptions excepted,—in no subdepartment is any act of dislocation, simple as above or modified, valid,—unless expressed in and by an appropriate written instrument. Name of the instrument—in case of *simple* dislocation, a *Dislocative*, or say *Dislocation instrument:* in each case of *modified* dislocation, the corresponding name.

Enactive. Instructional.

Art. 49. Exceptions excepted are—

1. The Army subdepartment, so far as concerns the situations belonging to the military branch of the service.

2. The Navy subdepartment, so far as concerns the situations belonging to the military branch of the service.

In relation to these situations, separate arrangements are made, as per Ch. x. Defensive Force, Section 13, *Military Judicatories.*

Enactive.

Art. 50. I. Shape, *simple dislocation. Dislocation instrument.* Among the heads, under which the matter of this instrument is entered, will be the following—

1. Time of the operation: designation made of it, by mention of the year, month, day of the month, day of the week.

2. Dislocatee, who: his names—personal and official.

3. Dislocator, who: his names—personal and official.

4. Supposed *justificative cause* of the dislocation: supposed justificative portion of the *law:* supposed justificative *facts*, with their application to the law.

5. *Evidence*, by which the existence of the supposed justificative matters of fact is supposed to have been ascertained: in general terms, brief indications of the *source* or *sources* from which the evidence was obtained:—*sources;* that is to say *Evidence-holder or holders*, who: evidence *what—personal, real*, or *written*, furnished by each.

6. Time, as above, and down to the *minute*, from and after which it is intended that the dislocation shall be considered as having taken place.

7. *Shape*, in which the inaptitude, the existence of which has been regarded as a sufficient justificative cause for the dislocation, is regarded as having place:—a deficiency to wit, in respect of appropriate aptitude in one of its four shapes: that is to say *moral, cognitional, judicial, active:*—probity, knowledge, judgment, active talent.

Enactive.

ART. 51. In case of deficiency in respect of appropriate cognitional, judicial, or active aptitude, instead of an act of simple *dislocation*, emanating from the *dislocating* functionary, may be employed an act of *resignation*, exercised by the dislocatee, with an act of *acceptance* thereto annexed by the *dislocator*, as attested by his signature; in this case, such *resignation* may be assigned as the sole cause of the dislocation:—in case of deficiency in respect of appropriate *moral* aptitude, resignation will not be accepted; in this case the dislocation will be stated as having had the deficiency for its justifying cause.

Ratiocinative.

ART. 52. By causes in great variety other than inaptitude in any shape,—resignation is alike capable of being produced. Examples are—

1. Ill health.
2. Better provision in some other shape.
3. Avoidance of separation from domestic or other social connexions.
4. Disagreement with other persons, functionaries or non-functionaries, with whom the nature of the resigner's business unavoidably brings him into habitual or frequent contact.

Enactive.

ART. 53. Added to the *Dislocation instrument*, but on a separate paper, will be the *Minutes of the record*, including the *Evidence*, constituting the ground of the decree, in execution of which the *Dislocation instrument* has been signed.

Enactive.

ART. 54. II. Shape, *suspension:* heads for entries, as above. Examples—

1. Time of the operation, designated as per Art. 50.
2. Suspendee, who: as per Art 50.
3. Suspender, who: as per Art. 50.
4. Justificative cause, as per Art 50.
5. Evidence, as per Art. 50.
6. Time from which the suspension is to reckon, as per Art. 50.
7. Time, at which it is to cease, as per Art. 55, when, in case of *renewal*, the *instrument* of renewal will be delivered for the information of the *Suspendee*. This, upon the principle of the *Future-communication-securing arrangement:* as to which, see the Procedure Code, Ch. x.

Enactive. Ratiocinative.

ART. 55. Rules for the *Suspender*.

Rule 1. Take, for the duration of the suspension, the least time which affords any promise of being sufficient; reserving, and declaring yourself to have reserved, power of unlimitedly repeated renewal, yet so that no *subsequent* suspension shall be for a term longer than the *first*.

Reason. Preventing the *suspension* from having the effect of *dislocation*, or being continued for an inordinate length of time, by forgetfulness, indolence, or ill-will.

Enactive.

ART. 56. Rule 2. On each such renewal, add the justificative cause: and whether it be the *original* justificative cause as per Art. 54, or some *fresh* cause. Particularize, in this last case, such fresh cause.

Enactive.

ART. 57. By any of the causes following, the suspension will be terminated.

1. Failure of the renewal.
2. Failure of the mention of the justificative cause thereof.
3. Failure of sufficient *notification*, as per Art. 54.

Enactive.

ART. 58. In the case of *suspension*, as in that of dislocation, added to the instrument will be an exemplar of the *record*.

Instructional.

ART. 59. To warrant *dislocation*, the evidence will need to be *conclusive:* for *suspension, presumptive*, or say *suspicion-inducing*, may suffice.

Enactive.

ART. 60. III. Shape, *transference permanent*, to a grade *not* inferior. Heads for entry, *mutatis mutandis*, the same as in case of simple dislocation, as per Art. 50.

Enactive.

ART. 61. IV. Shape, *transference temporary*, to a grade *not* inferior. Heads for entry, *mutatis mutandis*, the same as in case of *suspension*, as per Art. 54.

Instructional.

ART. 62. With or without *blame* on the part of the transferee,—transference, whether permanent or temporary, so it be to a not inferior grade, may have place. For examples, see the case of *resignation*, as per Arts. 51, 52. Note, that inaptitude with reference to this or that office, in this or that *situation*, may not have place with reference to a similar office in this or that *other* situation.

Instructional.

ART. 63. The case of a recent vacancy excepted,—transference of one functionary supposes simultaneous transference of another: non-existence of detriment to the public service being supposed, such transference, may in this case, have for its justificative cause, *mutual convenience*.

Enactive.

Art. 64. V. Shape, *transference, permanent* to an *inferior* grade. Heads for entry, *mutatis mutandis*, the same as in case of dislocation, as per Art. 50.

Enactive.

Art. 65. VI. Shape, *transference temporary* to an *inferior* grade. Heads for entry, *mutatis mutandis*, the same as in the case of *suspension*, as per Art. 54: so, arrangements, as per Arts. 55, 56, 57.

Instructional. Ratiocinative.

Art. 66. Note, that by a familiar and single-worded appellative—to wit, *degradation*, —*transference* to an *inferior* grade might have been designated. *Reason* for not employing it—Danger of a degree of *opprobrium*, more than sufficient for the occasion and the purpose. Of such opprobrium, one consequence might be—in name, *transference;* in effect, dislocation. By the necessity of passing his time in contact with persons, to whose knowledge his punishment had been characterized by this word,—uncomfortable, in such sort and degree might the situation of the intended transferee be thus rendered, that dislocation produced by resignation might, as a less evil, be embraced by him in preference. In this case, to the loss of the official situation in question would naturally be added the loss of all hope of being placed in any *other*.

Instructional. Expositive.

Art. 67. Cases in which, transference, if temporary, though it be to an inferior grade, might be a not inapposite punishment: Examples—

1. Offence insubordination, by disrespectful deportment towards an immediate superordinate in the subordinate's subdepartment: object of the transference, satisfaction and punition for a course of contempt or disrespect persevered in.

2. Or towards a functionary of a grade superior to his, in any *other* subdepartment or department.

Enactive.

Art. 68. VII. Shape, *stoppage of promotion:* stoppage *definitive*. Heads for entry, *mutatis mutandis*, the same as in case of dislocation, as per Art. 50: so, arrangements, as per Arts. 48, 49.

Enactive.

Art. 69. VIII. Shape, *stoppage of promotion:* stoppage *temporary*. Heads for entry, *mutatis mutandis*, the same as in case of suspension, as per Art. 54: so, arrangements, as per Arts. 55, 56, 57.

Enactive.

Art. 70. Special cases for *secrecy* excepted, the *publicity* given to the whole proceeding will be *maximized*, as in the case of ordinary Judicial procedure, as per Ch. xii. Judiciary collectively, Section 14, *Publicity*, &c.

Enactive.

Art. 71. Cases for secrecy. Example—

1. War, existing or supposed impending. To avoid furnishing information serviceable to hostile purposes, on the part of an enemy, or apprehended enemy,—the Special Judge or any superordinate of his may, in this case, locate a *Special Registrar*. Of the proceedings entry will, in this case, be made in a *special* and *secret* Register, as per Ch. xii. Section 14, *Publicity*, &c.

Enactive. Instructional.

Art. 72. Power to the Special Judge Appellate to *invoke* the assistance of the ordinary Judge, or *transfer* to him the cognizance of the cause, as per Art. 15. Whether this power shall be given, the Legislature will consider and determine.

Enactive.

Art. 73. Exceptions excepted, in the several cases following, exemplars of the Record will be disposed of in manner following:

These cases are—

1. Judicature, on complaint of oppression at large.

2 Judicature, for the purpose of warranting the exercise of dislocative power in any one of its shapes.

Judicature, on *appeal*, against an exercise of *transferential* or say *locomutative* power.

Modes of disposal will be the following—

1. Kept in the office of the Special Judge, one.

2. Delivered to each of the parties, one.

3. Transmitted to the office of every functionary, if any, superordinate to the Special Judge, one.

Enactive.

Art. 74. In the case of *suspension*, unless it be at the instance of *suspender* or *suspendee*, *exemplars* of the *suspension instrument*, or of the record, will not be transmitted to any other office.

Enactive.

Art. 75. So, in the case of simple *transference* to an office, not inferior:—transference whether definitive or temporary.

Enactive.

Art. 76. So in the case of *stoppage* of promotion.

Instructional.

Art. 77. In the application made of the matter of this and the last preceding Section, the Legislature will have due regard to the circumstances following—

1. Extent of the whole territory of the state.

2. Distance of the seats of the several offices from the metropolis.

3. Facility or difficulty of communication.

4. Smallness or magnitude of the number of grades of subordination in the several subdepartments respectively considered.

SECTION XXII.

Extortion obviated.

Expositive.

ART. 1. By *extortion* understand, on the present occasion, extortion, committed at the charge of any person whatsoever, non-functionary or functionary, by a functionary belonging to the *Administration* department, by means of the power attached to the official situation occupied by him, whatsoever it may be.

Expositive.

ART. 2. If, by oppression or fear thereof, in any one of the four cases, as per Section 21, above exemplified, profit to himself or any other person is obtained by a functionary at the charge of any other person whatsoever,—*predatory oppression*, or in one word *extortion*, is thereby committed.

Expositive.

ART. 3. By *oppression* at the charge of one person, *extortion* at the charge of another is capable of being committed: as where, to save any person from ulterior oppression, another gives money or renders service in any other shape, to the supposed eventual oppressor, or to any other person on his account.

Instructional. Enactive.

ART. 4. For the remedies, applicable, in the *direct* and *general* way to the prevention of *extortion*, see the title thus denominated in the *Penal Code:* for those applicable in a *less direct*, and to a certain degree *peculiar* way, see Section 21 of this present chapter.

Instructional.

ART. 5. Of extortion and fraudulent obtainment combined, an example, as striking perhaps as any that history ever did, or human nature ever could afford, may be seen in English Judicature.

Exemplificational.

ART. 6. By a species of subordinate Judges, styled *Masters in Chancery*, acting under the Lord Chancellor, sole Judge of the highest single-seated Judicatory, suitors are constantly compelled to pay money, and to a prodigious amount in the whole, to the said Masters, for attendance alleged by them to have been bestowed by them, and known not to have been so bestowed: at the same time, to a still greater amount, to the *Solicitors* (a class so called of professional assistants) of the parties on both sides, for *attendances* alleged to have been, at those same times, bestowed by these same Solicitors: and, in this case likewise, known not to have been bestowed by any one of them, by or for whom payment is compelled for their so mendaciously pretended services. In this way it is, that, in the constant and full view of the English public, *fraudulent obtainment* is combined with, and aggravated by, *extortion:* justice being to a certainty denied to all who should refuse, or be unable, to comply with the demand: the victim not having, in any case, any possible means of escape. Of criminality in this double shape, the profit goes into the pockets—in the first place of these subordinate *Judges*, and of their thus protected and even compelled accomplices, the *Solicitors:* in the next place, into that of the Lord Chancellor, by whom, for the extraction of profit from this and other sources in such disastrous abundance, a relative, or any other dependant or connexion of his, is, on each occasion, located at pleasure: all this, without so much as the pretence of application made of any test of appropriate aptitude, other than the pretended judgment of the patron, to whom, were it only by want of time, the actual exercise by it would be rendered physically impossible.*

This enormity is matter of perfect notoriety, and out of all dispute. It has not only been denounced over and over again in various publications, but—though without any the least token of disapprobation, has, of necessity, been exposed to view in the pages of a Report, communicated to the House of Commons by a commission, composed of men appointed by the present Lord Chancellor to sit in judgment on the system of Procedure of which this practice forms a part, and on his conduct in the direction of it.

Were it possible that prosecution should ensue,—the defence (for no other imaginable defence could there be) would consist in the extent, long continuance, and constancy of the practice. The practice of poaching, and that of smuggling, though neither of them so deeply stained with immorality, are both of them still more extensive, inveterate, and constant: but, among their accomplices, neither have the Poachers, nor the Smugglers, men sitting in Parliament, to secure to them the continuance of the profit,—to secure them for ever against punishment, and as long as possible from reproach and ignominy; of ignominy at the hands of all men to whom justice is not an object of either hatred or indifference.

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* See this farther illustrated in Indications respecting Lord Eldon, vol. v. p. 349.—*Ed.*

Section XXIII.

Peculation obviated.

Expositive.

Art. 1. Peculation is where, in an indirect way, a *Trustee* obtains, for himself or another, undue profit, in a pecuniary or quasi-pecuniary shape, at the charge of an *intended Benefitee:* producing thereby *loss*, pecuniary or quasi-pecuniary, or *sufferance* in some other shape, in manner or quantity not intended by the law, by, or in virtue of which, the *trust* was created.

Expositive.

Art. 2. The *trust* thus *violated* may be either *private* or *political: political*, it may be either *public* or *semi-public*. On the present occasion, trust in both these its branches is the object in question: *public*, in so far as the loss, being pecuniary or quasi-pecuniary, falls upon the public at large: *semi-public*, in so far as it falls upon the population of this or that particular class or district.

Expositive.

Art. 3. Of the *modes*, in which, by a *person at large*, undue profit may, in a direct and criminal way, be made at the charge of another, examples are as follows:

1. Theft.
2. Fraudulent obtainment.
3. Extortion.
4. Robbery.

Expositive.

Art. 4. That which would be called *theft* if committed at the charge of a person at large, is called *embezzlement*, when committed by a *trustee*, at the charge of an *intended benefitee*.

Expositive.

Art. 5. For the *direct* remedies against peculation, see the Penal Code, title *Peculation:* for *indirect*, the measures of security brought to view in Section 7, *Statistic function*, Bis-section 4, *Loss-Books*. See also what follows.

Enactive.

Art. 6. Whatsoever articles come to be *procured* for the public service, by exercise given by a Minister, or by any subordinate of his, to the *procurative function*,—if the person of whom they are procured be, by consanguinity, affinity, patronship on the one part, and aspirancy on the other, immediately or interventionally connected with such Minister,—the Minister will, in the instrument of contract, cause declaration of such connexion to be attached to the other contracting party's name.

Enactive.

Art. 7. Moreover, with respect to any supposed but not generally-known tie of connexion,—any person may, in any public print,—leaving with the printer, his name and abode, in such manner as that communication may be sure to reach him, as per Procedure Code,*—address to the Minister any question tending to impute partiality on that account: and, to all such questions, the Minister will either make such answers as to him shall seem meet, or else abide all such inferences as may come to be drawn from silence.

Ratiocinative.

Art. 8. So it be but avowed,—from no such connexion can any adequate reason be deduced for inhibiting any such contract, or imputing improbity as of course, in respect thereof, to the functionary, or such his relative, as per Art. 6. The person, of whom it can be obtained best and cheapest, is the person, of whom, in every case, the article ought to be procured: and, if between one dealer and another, there is not, in these respects, any difference,—of which of them the article is procured, is to the public, and ought to be to the government, a matter of indifference.

Ratiocinative.

Art. 9. So it be but avowed and publicly known,—so far from being conducive to peculation, a connexion of this sort would rather be a security against it: for, by this means, the public eye which, in the case of a person not supposed to be thus connected, might remain closed upon the transaction, would naturally be wide opened to it.

Ratiocinative.

Art. 10. Under these circumstances,—if a participation, in any such contract as that in question, ought to be interdicted, even to the Minister himself,—the proper ground for the interdiction would be—not the danger of *peculation*, but the draught, which a private business of this sort would naturally, if not necessarily, be making upon him, for that *time* and *attention*, of which, by acceptance of the office, he has engaged to transfer to the public service the whole benefit.

Ratiocinative.

Art. 11. By any endeavour pretended or real, to apply a remedy in any other shape, to this always impending disorder,—the disorder would not be lessened but increased. That which a minister would naturally fear to do with his own hand, no cause can he have for fearing thus to do by another hand. For all such purposes, relative situations are sufficient: no concert being necessary, by no evidence need he expose himself to be reached. In that situation, as in every other,—without the most flagrant and mischievous injustice, for no misdeed in which he had not been proved to have participated, could any man be punished: for,

* Ch. viii. Section 13; see vol. ii. p. 43.

by punishment in any such case, the sense of security would, in the breast of every person who knew of it, be weakened, if not destroyed: in the fate of any man so punished, any other man would be apt to read his own.

Ratiocinative.

ART. 12. On the other hand, against no such disclosure as is here required, can any person feel reluctance, unless it be his wish and desire, upon a favourable occasion, to do or see done the very thing—to be guilty or see others guilty of the very crime—which it is the purpose of the disclosure to prevent: and the more ardent the desire, the more intense will, of course, be the reluctance. Functionary! this desire—is it not yours? Then what is it you can suffer by any difficulty opposed to the gratification of it? "But the imputation." . . Yes, if it were to you alone, but it is to the whole species, without exception, that it applies itself. Say you—"I am *not* as other men are!" Well then—if not, it is—not because you are better than they, but because you are so much worse. If, in your case, suspicion is not necessary—necessary in exactly the *same* degree as in that of the generality of men—it is because it is so in a *greater* degree. This is what, by this very claim of yours—this claim of exemption and privilege—you have proved. It is the very claim, which every malefactor, if he saw any chance of its being granted, would be sure to make: and the more incontestibly as well as the more atrociously he were guilty, the more anxious would he be to obtain it. Your wealth—your factitious dignity—your political power—your power in all shapes—is it on these that this claim of yours grounds itself? Rightly understood, all these are but so many *bars* to it. All these are so many instruments of possible delinquency in all these shapes:—of delinquency, in the case of every man, possible; in the case of every man, more or less, probable. Thus, from beginning to end, saith the Penal Code. Yes: so says it everywhere: for if anywhere there be a *person* exempt from suspicion as being incapable of delinquency,—it is because he is—not man, but God upon earth: which being granted, that which in a man would be *wrong*, is in this God *exercise of right*. To abuse power is, upon occasion, the wish of every man: the greater the power, the greater the facility he has for giving effect to that wish, and therefore, the *more*, not the *less*, needful, is this and every other bar and check that can be opposed to it. The greater the power, the stronger indeed is the ground.... the ground! but for what? for suspicion and precaution surely: for anything rather than confidence. Are you sincere and honest? You will now give up this exclusive claim of yours: you will submit, with resignation, to the common lot. Are you insincere and crafty? Your mask is now off, and will no longer serve your purpose.

Instructional.

ART. 13. As to *situations of mere trust*, in which the business consists in the receipt and disbursement of money,—by the following rules, unless for special and preponderant reason to the contrary, will the conduct of the Legislature be guided—

1. In the case of each such situation, *minimize* the quantity of *money*, placed at the disposal of the occupant.

2. Minimize the *time* during which it is left at his disposal.

3. As a condition precedent to his location, —require *security* for the eventual forthcomingness of a sum, as near as may be to equality, with the maximum of the money so placed at his disposal.

4. Such security may be composed—partly of property of his own, remaining at his own disposal, partly of property belonging to persons, consenting to become *bondsmen:* bound, in case of deficiency, to provide, to an extent, in each case limited, for the filling it up: or it may be given—partly in the one shape, partly in the other.

5. To the fact of his receipt of the money in each instance, give *recordation*,—together with whatever degree of *publicity* the regard due to frugality admits of.

6. So, to the *time* and *place* of its being transferred into his hands: with a sufficient description of the *person*, by whom it was so placed, and of the *cause* and *purpose* of such transfer.

7. So, on its passing out of his hands,—to the time, cause, and purpose of such its subsequent transfer.

Instructional.

ART. 14. For the exclusion of sinister profit by public loss,—a consideration that will be kept in mind, is—that *money's worth*—in all its several shapes, immoveable and moveable —is more exposed to be made an instrument of such loss, than *money* itself is: that, accordingly, generally speaking, in the exercise of the *procurative*, *reparative*, *eliminative*, and *venditive* functions,—in relation to land, edifices, vessels, or goods,—more facility is afforded for such mal-practice, than in the exercise of the *receptive*, *custoditive*, and *transmissive* functions, in relation to *money:* in a word, that *peculation* is attended with less difficulty and danger than *embezzlement:* on this, as on other occasions, proportioned to the demand, will be the Legislator's vigilance.

Instructional.

ART. 15. Of the ways in which such sinister profit may be made by a *peculator*,—examples are as follows:

1. Purchasing from a confederate or favourite, he gives over value.

2. Selling to a confederate or favourite, he accepts under value.

3. In case of competition between vender and

vender, he over-rates the quality of the goods tendered by a confederate; he underrates the quality of those tendered by a rival dealer.

4. In case of competition between purchaser and purchaser, he assorts the articles, in a manner suitable to the demand of the confederate or favourite, unsuitable to the demand of the competitor.

Instructional.

Art. 16. By the united powers, of recordation, publication, and unrestricted interrogability, as per Arts. 6, 7,—an effectual bar may, in every instance, be opposed, to breach of trust in both those forms: improbability of accomplishment, and probability of detection, will concur in excluding the attempt.

Section XXIV.

Legislation-regarding functions.

Enactive. Expositive.

Art. 1. Exercisible, in an appropriate seat, in the assembly of the Legislature, by himself or a Depute permanent,—to every Minister, subject to the orders of the Legislature, belong the functions following—

1. *Argumentative* function: exercised by taking part in a debate on the same footing as a member.

2. *Initiative* function: exercised by making a *proposition*, or say *motion*, in relation to any subject, in any shape.

3. *Responsive* function: exercised by answers given to all questions put to him by members, or fellow-ministers, as above, with the permission of the assembly.

Enactive. Expositive.

Art. 2. But, by no Minister, even though it be with the consent of the assembly, can the *votative* function be exercised: the function exercised by the delivery of a vote.

Enactive.

Art. 3. By himself or Depute permanent, every Minister is bound to attend throughout the sitting of the assembly: to wit, in readiness to answer questions, as per Art. 1.

Enactive.

Art. 4. To the several Ministers as well as to Members, apply the several provisions in Ch. vi. Legislature, Section 29, *Members' motions:* as also the provision made in Ch. xi. Ministers severally, Section 2, *Legislation Minister*, for giving to the *Pannomion*,—through whatsoever channel the several portions of it may, from time to time, come to be introduced,—the benefit of the official experience, and consequent appropriate aptitude, in the department in question endeavoured to be secured: whether it be the Legislative immediately, or the Legislative with the intervention of the Judiciary authorities, as per next Article.

Enactive.

Art. 5. In Ch. xii. Judiciary collectively, Section 19, *Judge's contested-interpretation-reporting function*, Section 20, *Judge's eventually emendative function*, and Section 21, *Judge's sistitive*, or say *execution-staying function*, will be seen the provision made, for preserving the rule of action against deterioration; and, in the *melioration-suggestive function*, allotted to all functionaries, may be seen the provision made for securing the *Pannomion* against deterioration from that source, and the continual melioration thereof from that same source. *Mutatis mutandis*, to the situations of the several Ministers in their several subdepartments, apply the several provisions therein contained: except that the several reports will be transmitted through the office—not of the Justice Minister, but of the Prime Minister.

Enactive.

Art. 6. To every administrative situation *subordinate* to that of Minister,—belongs the *contested interpretation-reporting* function, as well as the *melioration-suggestive*.

Enactive.

Art. 7. To the Legislature it will belong to consider and determine,—to what situations, if any, shall be allotted, and through what channels, as above, shall be exercisible,—the *preinterpretative* function, as per Ch. xii. Section 22, with reference to that portion of the matter of the *Pannomion* which applies to their several offices.

Enactive. Instructional.

Art. 8. So likewise, to what situations, if any, the *sistitive* or *execution-staying function*, shall belong.

Instructional.

Art. 9. In so doing, regard will, in each case, be had—on the one hand, to the quality and quantity of the irreparable evil liable to have place, for want of the exercise of this function; on the other hand, from the exercise of it: and, in both cases, to the degree of probability of the result: to the end that thus on every occasion, evil may, in every shape, be minimized.

Section XXV.

Securities for appropriate aptitude.

Instructional.

Art. 1. *Securities for appropriate aptitude.* Under this head, subject-matters for consideration are the following:*

* This analytic sketch should, by right, have been exhibited at an earlier point of time: that is to say, in Ch. vi. Legislature, Section 31, *Securities*, &c. But the conception of the draughtsman had not, at that point of time, received the correspondent degree of extent and maturation.

In a work of this kind, to no person assuredly

1. *Elements* or *branches* of appropriate aptitude, the existence of which, on the part of the functionaries in question, as on other occasions so on this, is endeavoured to be secured: Here, as elsewhere, *moral*, *intellectual*, and *active:* intellectual, including *cognitional* and *judicial*—knowledge and judgment.

2. *Motives*, the operation of which, as on other occasions so on this, trusted to, for the giving effect to the securities here provided: Desire of pleasure in all shapes, desire of exemption from pain in all shapes. For the several pleasures and pains, considered as objects of desire or aversion,—and thence as *motives*, creative of correspondent *interests*,—and as constitutive of the only sort of matter of which motives can be composed, — see *Springs of Action Table*—(in vol. i.)

3. *Sanctions*, or say *sources*, from which the motives here employed take their rise: the popular or moral, and the *legal:* to the popular, or say *moral* sanction, execution and effect being given by the *Public-Opinion Tribunal:* to the *legal* sanction, by the *legal* tribunals: to wit, the several judicatories, whose operation applies to functionaries as well as non-functionaries,—and by the several administrational and *virtually* judicial tribunals, whose operations, performed through the medium of the several powers locative and dislocative, is mostly confined to functionaries and locables looking to become functionaries.

4. *Persons*, to whose conduct, as on other occasions so on this, for the purpose of securing, on their parts, the existence of the elements of aptitude, or say the *qualifications*, here in question:—on *former* occasions, the members of the legislative body, and the Prime Minister: on the present occasion, the several Ministers, and their several subordinates.

5. *Persons*, by whose agency as on other occasions so on this, the power of the above-named several *sanctions*, is applied to the production of the *effect* looked to from these several *securities:*—persons at large, members of the political community, together with those of all other communities, considered as members of the Public-Opinion Tribunal; and the several superordinate functionaries, belonging to the several *legal tribunals*, judicial and administrational, just mentioned.

6. *Purposes*, to which, as designated by their most extensive and comprehensive denominations—that is to say, *maleficent* modes of conduct, in the *prevention* of which, as on other occasions so on this, the operation of the securities here provided, and the aptitude here endeavoured to be ensured, are endeavoured to be employed:—1, *misuse* of the official powers in question—2, *nonuse* of those same powers, in cases where the declared end in view of the institution requires that *use*, and thereby *right and proper use* of them should be made.

7. Relative point of *time*, at or during which, as on other occasions so on this, the operation of the several efficient causes of security has place:—1, *antecedential*, 2, *concomitant*, 3, *consequential;* relation had to the exercise given by the several functionaries to their several functions, in their several official situations. As to this, see in particular Ch. xii. JUDICIARY COLLECTIVELY, Section 32, *Securities*, &c.

Instructional.

ART. 2. To the Legislature it will belong, on survey made of the several securities provided in the case of the situation of Member of the Legislature, as per Ch. vi. Section 31, and that of Prime Minister, as per Ch. viii. Section 12, *Securities*, &c., Art. 1.—to consider —whether any of them, and which, are, with promise of benefit, applicable to the situation of Minister.

Instructional.

ART. 3. Apply, of course, the securities following—

1. Registration system.
2. Publication system.
3. Dislocability, by the Legislature.
4. Dislocability, by the constitutive authority.
5. Responsibility, for insufficiency in the exercise of the several functions—*informative*, *indicative*, and *initiative:* as per Ch. viii. Section 3, *Relation to the Legislature*, Arts. 3, 4, 5, 6.
6. Dislocability, for acceptance of any other office.
7. Dislocability, for acceptance of any office, gift, or factitious honour or dignity, at the hands of any foreign government.
8. Obligation to keep in exercise a Depute or Deputes, coupled with responsibility for their aptitude.
9. Responsibility for the aptitude of their immediate subordinates respectively, as per Arts. 26 to 29, of this section.
10, Securities afforded by Section 16, *Locable who:* in particular, that afforded by the exa-

can it be matter of surprise—if new, and it is hoped, more correct views, and consequent demands for amendment, should, from time to time, be seen presenting themselves. In the composition of the present work it has happened in some instances that the time, at which the demand has presented itself, has been when the part in question of the work has been still unprinted, and, by that means, in a condition susceptible of correction; to wit, in the mode, designated in Ch. vi. LEGISLATIVE, Sect. 29, *Members' motions*, Arts. 5, 6, by the appellation of the *reeditive*. But, in the present instance, besides the expense of time that might be necessitated by the operation of working up the matter anew,—the references antecedently made to articles destined for the section thus amended, would have been misnumbered. Thence it is, that in and for this section, as well as Section 16 and Section 17, the *corrective*, or say *directive* mode,—the mode employed by the insertion of added matter, is here employed in preference to the *reeditive*. [In the original edition the supplemental matter of Section 16 from p. 279 to p. 283, as well as that of Section 17 from p. 286 to p. 293, was printed so as to follow Section 17.]

exercise of a dispensing power setting itself above the law.

By every individual instance in which this device is practised,—practised on the one part and submitted to on the other,—exercise and strength are given to secret and silent despotism, at the expense of open, and preparatorily, and freely, and publicly discussed legislation.

Instructional.

Art. 40. In pursuance of this same artifice,—for prevention of opposition and discontent, a natural and common practice is, in the first instance,—on each several occasion, so long as the particular noxious purpose can, without greater inconvenience, be effected in some other way,—to forbear giving exercise to this power, otherwise than for a purpose, which, in itself, or at any rate according to received opinions, is of a beneficial nature; whereupon (when, by a little experience, accustomed to see the usurpation applied to good purposes) the people are insensibly led into the habit of regarding it as intrinsically not only innoxious but beneficial: and in that character, paying, in opinion and action, the same deference to the executive as to the legislative authority,—to the subordinate as to the superordinate,—to anticonstitutional insubordination as to constitutional legislation,—to acts by which law is violated as to acts by which law is made: thereby aiding those, who should be the under servants of their servants, in their endeavours to put themselves over the upper servants, and thereby over those, in whom both upper and under servants ought to behold their masters.

Instructional. Exemplificational.

Art. 41. In especial manner and frequency, this artifice may be seen employed in English practice; employed, and with such success, that public men—those even, who, on other grounds, are all the while acting in declared opposition to those usurpers—may be seen and heard speaking of the exercise of a *dispensing power* as one of the ordinary operations of Government, in so much that, on this or that occasion, it is even matter of charge against them, their not having had recourse to it.

Instructional. Exemplificational.

Art. 42. Continually-increasing extent given to this abuse, is a relative use of, and motive for, two other congenial abuses: 1. One is—minimization of that portion of time, during which, in each year, legislation business is carried on;—as to this, see Ch. vi. Legislative, Section 20, *Attendance and Remuneration;* 2, the other is—maximization of that portion of the field of law, in which the rule of action is left in the state of *fictitious*, alias *judge-made* law; and, at the same time, minimization of the clearness and correctness, and thence the cognoscibility, as well as the extent and comprehensiveness, of that part which has been brought into the state of really-existent and *legislature-made* law.

Instructional.

Art. 43. A circumstance which, under a tyranny of the few over the many, giving peculiar facility and commodiousness to the practice of carrying on the business of government in this pernicious mode, is—that, in this way, the power of legislation—supreme and all-comprehensive legislation—is exercised without expense of time or thought, and without control from opposition on the ground of the greatest-happiness principle. "*Whatever is, is right*"—(whatever is—that is to say, whatever, by men in the situation in question, has been done)—being tacitly assumed as a postulate,—the *rectitude* of doing the same thing, on any and every subsequent occasion deemed a similar one, is stated and acted upon, as a necessary consequence. This is called *following precedents:* and this course it is that is constantly held up to view, not only as a safe course, but even as the only safe course: acting, in consequence of all-comprehensive views taken of the same subject, under the guidance of the greatest-happiness principle, being at the same time marked out for a mixture of abhorrence and contempt under the name of *theory*, and spoken of as an *unsafe* course: that course which, in truth, is the most *opposite* to the only safe one, being thus represented and acted upon as if it were *itself* the only safe one.

Instructional.

Art. 44. Thus it is—that, by the comparative blindness of man in each preceding period, the like blindness in each succeeding period is secured: without the trouble or need of reflection,—men, by opulence rendered indolent, and by indolence and self-indulgence doomed to ignorance, follow their leaders,—as sheep follow sheep, and geese geese.

Instructional.

Art. 45. To the purpose to which this mode of governing is applied, nothing can be more commodious; the labour of thought is saved to all who, by indolence or incapacity, or both, stand excluded from the exercise of it: the operation of judging of the mere similitude of one mode of action to another, without confronting either the one or the other with whatever, on the occasion in question, is the proper end in view and standard, being that sort of mental operation, for which the lowest degree of intellect—the lowest degree in the conjunct scales of cognitional and judicial aptitude—is sufficient.

Instructional.

Art. 46. And what is the class of persons, for the giving effect to whose will this mode of legislation is, in so eminent a degree, well adapted? It is the class of those, of whom, under such a form of government as that in question, the great majority of the legislature is so sure to be composed: men who being, by

opulence, rendered destitute of all motives for mental exertion, are, by the very nature of man, from the beginning to the end of life, kept as above, in a state of relative ignorance and mental impotence.

Instructional.

ART. 47. Thus it is, that of the thousand persons or thereabouts, on whose will the prosperity of the millions depends, the action of the whole number (an accidentally-introduced few excepted, or not excepted) is determined by a particular and sinister interest, on almost all points, standing, and working, in direct opposition to that of the millions. This class may be divided into two subclasses: those with *misemployed*, and those with *unemployed* faculties: to the *misemployed* (meaning with relation to the universal interest) belong the *lawyer* subclass, the *mercantile* subclass, and the *official* subclass: to the unemployed, headed and led on by men in *possession* and men in *expectancy* of situations in the peerage, belong those who, though distinguished as above, by pre-eminence in mental imbecility, are, by this device, enabled to do the work of depredation and oppression, with the mask of wisdom on their visages, and the praise of virtue in their ears, sung on each occasion by the whole company in chorus.

Instructional.

ART. 48. One point however there is—on which a representative democracy and an aristocracy-ridden monarchy do (it must be confessed) agree: under both forms of government, the possession of power is secured to one class, to the perpetual exclusion of another class. In the *character* of the *power-holding* class in the two cases, lies the sole difference. In the democracy, the individuals of whom it is composed, are the most *apt* of all whom the whole population of the country furnishes: in the monarchy, as above, the most *unapt:* and thus lodged must the powers of government continue,—and, thus disposed of the lot of the governed millions,—until these same millions, roused at length by the smart of the sufferings thus continually increased, rise up in a mass, and take the care of their own welfare into their own hands.

Instructional.

ART. 49. *Precedent* and *practice*—no head too empty or too weak, to make the tongue say *aye*, at the sight, or the sound, of both or either of these two so nearly synonymous and so aptly-associated words:—precedent, *set* by the distinguished few whose characteristic is political and moral wickedness: precedent, *followed*, practice persisted in, by those comparative many, whose characteristic is a compound, composed of political wickedness, combined, as chemists phrase it, *in excess*, with mental weakness.

This mode of acting—acting by *precedent* (understand always, instead of, and in preference to, *enactment*) what is it? It is acting without reason, to the declared exclusion of reason, and thereby in declared opposition to reason: acting in a more particularly anti-constitutional manner, when it is by the *Executive* or the *Judiciary*, in opposition to the acts of the Legislature.

The more flagrant is the anti-nationality and absurdity, the more *antique* the *precedent:* the more antique the precedent—that is to say, the more barbarous, inexperienced, uninformed, and prejudice-led the race of men, by and among whom the precedent was set:—the more unlike that same *past* state of things, to that which, at the time in question, is the *present* state of things.

To act thus—to argue in defence of action in this way—is it not as much as to say, *I will have it so*, because this or that other man, still more profoundly ignorant than myself, and still less restrained from evil by the tutelary control of public opinion than myself,—said in *his* day—said some scores or some hundreds of years ago—*I will have it so?* These declarations, are they not such as every man who acts and argues in this way should be regarded, and dealt with, as having made?

By these arguments is endeavoured to be set up an everlasting bar against *reform*, be the abuse ever so mischievous—against *improvement*, be it ever so beneficial and unobjectionable.

Instructional.

ART. 50. Observations on the system of judicial control, employed in this Section and in Sections 20, 21, in preference to that of arbitrary will.

Of the substitution here made of judiciary to purely arbitrary procedure in the Administration Department, examples are not wanting in the practice of any civilized nations of Europe.

Witness, in every nation the *Courts Martial.*

Witness, in English practice the *Courts Martial* and *Military Inquiry Courts.*

In none of these cases, without reasons regularly assigned, accusation on specific grounds, elicitation of evidence, and conjunct deliberation, by a body of judges,—is dislocation commonly pronounced, or suspension, or so much as forced transference. How averse soever,—not altogether deaf are these judicatories to complaints preferred by subordinates against superordinates. How comes it then—that, in the case of the non-military subdepartments of the Administration Department, the security, afforded by the essentially-necessary judicial forms as above, is almost without exception denied?

Instructional.

ART. 51. Instead of it may be seen—in absolute monarchies, in relation to all non-military administrational situations, dislocation altogether arbitrary; in the English, an incon-

gruous and pernicious mixture, of arbitrary dislocability with virtual undislocability, how flagrant soever the wrongs done to individuals, to the public, or to both. General rule, dislocability altogether arbitrary: exceptions made, here and there, with great parade, by the Latin phrase, *quamdiu se bene gesserit;* in English, *during good behaviour:* alias, *at the pleasure of the Judge.* Note too, that in this case the mode of procedure is not, as above, the natural, summary, and naturally-effectual mode; but the technical and never-effectual mode pursued in the ordinary high judicatories.

Instructional.

Art. 52. Referring his complaint to the one great penal justice shop, the King's Bench, a man by whom a wrong is sustained, places his complaint in the hands of a Judicatory, to which every one of the requisites necessary for the administration of relief is completely wanting.

Instructional.

Art. 53. Law, by which the wrong in question is defined, and prohibition attached to it, none: disposition, none on the part either of Judge or even of Jury (not to speak of the secretly acting instrument of impunity the *Grand Jury*) to give relief against the wrong, had it been so marked out and combated by the law: both situations filled by members of the aristocracy, bound by the chains of corrupt dependence on the Monarchy, and predetermined to give, on every occasion, the most effectual support, to power howsoever exercised. In relation to evidence, arrangements, such as in effect to put in great measure an exclusion upon all testimony but that of *willing* witnesses: and the situation of all actually percipient witnesses such, as to render it, on every occasion, in a high degree improbable, that among them should be found any willing witnesses.

Instructional.

Art. 54. In this state of things, if the whole system of intercourse between functionaries and non-functionaries on the one hand, and superordinate and subordinate functionaries on the other hand, is not one unvaried scene of oppression, it is owing—not assuredly to the state of the law, but to the species and degree of good morals and good manners, which,—under the fostering care of the popular or moral sanction, as applied by the Public-Opinion Tribunal,—has been nurtured and kept on foot, in spite of the law, and of whatever has the force of law.

Instructional.

Art. 55. In the depths of the great pitfall, in which the tickets in the lottery called *Justice* are openly sold—sold at never pre-ascertainable, and continually increasing prices,—anxious indeed must that evil-doing functionary be to experience a stroke from the rod of punishment, who can so much as prevail upon the hands that hold it, to gratify him with a touch of it: addressing himself to them, he will be addressing himself to men, to whom he will find *his* impunity scarce less dear than their own.

Instructional.

Art. 56. Hence, when, in the highest judicatory of all, accused of having pocketed £10,000 of public money, an Ex-Cabinet Minister, knowing the men he had to deal with, stood up and said "Yes—I have pocketed the £10,000," "*No*" (was the answer of every one of the majority)—"*No, upon my honour you have not.*"

Instructional.

Art. 57. Against oppression in no one shape, do the oppressed, (so it will be seen in detail,) find any tolerably efficient security, in English legislation coupled with English Judicature. Ask for *relief*,—what you receive is *aggravation:* oppression by partially assessed, and, to the vast majority of the people altogether unsupportable, expense. Complain of oppression, the yoke is additionally loaded by irresistible depredation: sole relief against both, a sort of anarchy, creeping on by degrees, and raising up its head under the feet of tyranny.

Instructional.

Art. 58. Highly advantageous in comparison is, in this respect, the situation of military men. To them justice could not quite so safely be denied as to their unarmed countrymen. Accordingly, from military procedure no profit finds its way into the pockets of the Judge: while, from non-military procedure flow into the correspondently situated pockets such immense and ever increasible profits. Hence, the purity of the one system, the corruption of the other. Hence, in the one case, the system is so *well-suited*, to what in both cases is the sole proper and professed purpose—giving execution and effect to the substantive branch of the law: hence, in the other case, so utterly *hostile*. Remains, indeed, as a source of corruption in the military case, the despotism of the Commander in Chief: but, that despotism would have nothing to gain, on the contrary, much to lose, by poisoning the system with factitious expense and factitious delay for increase of the expense, and absurd arrangements in relation to evidence,—these too for increase of the expense, and moreover of that uncertainty, from which the source of the expense, and the profit extracted from it, receive their increase. In that part of the present Code which applies to the *Judicial* department, and thereafter in the Procedure Code, this state of things will come to be laid open in some detail; but even on the present occasion, reference to it could not be altogether omitted: those which belong to evidence, see in complete detail in the *Rationale of Judicial Evidence.*

SECTION XXVI.

Architectural Arrangements.

Instructional.

ART. 1. Among the *ends in view*,—or say the *elements* or the *features* of appropriate aptitude,—in the mode of carrying on the business of the Administrative department and its several subdepartments,—are some, which cannot be given to it in so high a degree, without, as with, that assistance, which is not derivable to it from any other source than the art-and-science of *architecture*.

Instructional.

ART. 2. Here, as elsewhere—main ends to be aimed at—those already brought to view, as per Section 7, *Statistic function:* namely—maximization of relative good, and minimization of relative evil:—of relative good; that is to say, of the value of the benefit, accruing to the public, from the exercise given, by the several functionaries belonging to the several subdepartments, to their several functions:—of relative evil, that is to say, of its main branch—to wit, diminution of the benefit just mentioned; of its collateral branches, to wit, the several evils of *delay*, *vexation*, and *expense*.

Classes of persons, in different ways affected by these evils respectively, are—1, Suitors, at and to the several offices; 2, Functionaries, thereto belonging.

Instructional.

ART. 3. By appropriate architectural arrangements, contribution, (it will be seen,) may be made at the same time to that same main end, and to those same collateral ends: for, by those same architectural arrangements, by which delay, vexation, and expense, are reduced in favour of suitors,—may delay, as well as vexation and expense, be seen reduced in favour of the directing functionaries; and through them, in favour of the public service.

Instructional.

ART. 4. Intermediate purposes, to which, for maximization of good and minimization of evil, Architectural arrangements are applicable to official edifices, are—publicity and secrecy of intercourse: *publicity*, in the cases where publicity, *secrecy*, or say *privacy*, in the cases where secrecy is in the highest degree conducive to those same desirable purposes.

Narrow will have been seen to be the extent, to which secrecy, compared with that to which publicity, is productive of those same pre-eminently and universally desirable effects.

Instructional.

ART. 5. With a view to the *choice* as between publicity and secrecy—subject matters susceptible of diversification and requiring consideration, are—1, Occasions; 2, Persons; 3, Places; 4, Times; 5, Points of time; 6, Lengths of time.

Instructional.

ART. 6. On one and the same *occasion*, what may happen is—that, at or in the same place or places, at one and the same point of *time*, for these desirable purposes, it may be requisite—that, during one and the same length of time, as to persons two or more, the existence and the matter of the intercourse should be known, and in so far public, so to another or others unknown, and in so far secret, or say private.

Instructional.

ART. 7. According to the nature of the business, the demand, as between publicity and secrecy, will be seen to vary, as between *department* and department; and, in the same department, as between *subdepartment* and subdepartment: so also, in the same subdepartment, as between *office* and office.

Instructional.

ART. 8. As to secrecy—the department, in which the *usefulness* of that state of things is at its maximum, is the Constitutive. So also the *extent*, to which this usefulness has place. This usefulness consists in the need there is of secrecy of suffrage for the preservation of liberty of suffrage: preservation of it, that is to say, against corruptedness, by the influence of the matter of reward and punishment, applied to the producing an opposition—between the choice in reality desired to be made, and the choice which, in appearance alone, is that which the person in question is desirous to make: as where, at an Election, it being the desire of an Elector that A should be the candidate chosen,—the case is—that, by contemplation of the matter of good or the matter of evil, as eventually about to be received by him at the hands of this or that other person, an Elector gives his vote in favour of B: B being a candidate other than the one whom, on that same occasion, it is his wish to see successful.

Instructional.

ART. 9. Upon the agreement or disagreement, or say upon the identity or the diversity,—as between the wish really entertained, and the wish expressed by the outward sign employed in giving expression to it,—depends the character or say the quality, of a *vote* or say *suffrage*, in respect of the difference between *genuineness* and *spuriousness:* if the two wishes point to the same object, the quality exemplified is *genuineness:* if, to two different objects, *spuriousness*.

Instructional.

ART. 10. The Department which, taken in its totality, presents itself as being that, in which the need of publicity, as compared with the need of secrecy, is most extensive,—is the Judiciary.

Instructional.

Art. 11. The Department which, taken in its totality, presents itself as being that, in which the need of publicity exists in an intermediate extent—less, to wit, than in the *Constitutive*, greater than in the Judiciary,—is the *Administrative*.

To the cases in which the demand for secrecy has place,—they being cases of exception,—occasion for making reference has, in the chapters and sections of this volume, been already frequent. Others will be seen in the several chapters, which have for their subject the Judiciary Department.

Instructional.

Art. 12. For the *uses* of *publicity*, by *whatsoever means* effected, see above, Section 25, *Securities, &c.* For the uses of *secrecy* by whatsoever means effected, see Ch. vi. Legislative, Section 21, *Sittings public and secret;* Ch. xii. Judiciary collectively, Section 14, *Publicity, &c.*, and other intermediate places therein referred to. Now, as to the mode, in which, to publicity and secrecy,—in the several cases in which they are respectively productive of *good,—architectural arrangements* in particular may, in quality of *means*, be made subservient.

Expositive.

Art. 13. By *delay*, is meant, on this occasion, delay in respect of *communication:* of communication on the part of persons employed in the service of the subdepartment or subdepartments in question, with any of the several objects, whether *persons* with whom, or *things* with which, in and for the exercise of their several functions, it is necessary that communication should have place.

Instructional. Expositive.

Art. 14. As for other purposes, so for these,—instruments necessary to communication are—the psychological and the purely physical: psychological, the two so intimately connected senses, *sight* and *hearing:* correspondent physical instruments, *light* and *air:* air, in that state of motion of which *sound* is the *result*. When and where, by means of both these senses, perception is rendered instantaneous,—delay is not only minimized, but excluded altogether; when and where, in regard to either of them, perception fails in any degree of being instantaneous,—delay, in a degree proportioned to that of the failure, fails of being excluded.

Instructional. Ratiocinative.

Art. 15. So simple, so obvious, so familiar, the appropriate arrangements;—so sure of being effectual, so easy to be employed, so cheap in comparison with all others;—shame might have prevented the mention of them, had not a justification but too sufficient been afforded,—not only by the utter neglect of them in *practice*, but even by the absence of all mention of them in discourse. *Principle* say the all-comprehensive *juxtaposition* principle.* Corresponding *Rule*. Place in *contiguity* the several *offices*—meaning here the several *apartments* allotted for the official abodes of the several proposed intercommunicants, during the time of such parts of their respective businesses as can in those several places be most conveniently carried on.

Expositive.

Art. 16. *Offices*—say then, as above, *thirteen:* understanding at the same time—that, under this name, either so many entire and separate edifices, or so many apartments only,—and those in the same, or in any lesser number of edifices,—are as yet alike capable of being designated.

Instructional.

Art. 17. *Relative situation of the offices.*

Of the thirteen Ministers, two, to wit, the Election Minister and the Legislation Minister, not being necessarily subject to the direction of the Prime Minister,—remains *eleven* as and for the *number*, of those, in the instance of each of whom, need may have place for an office within the reach of the common superordinate, for the purpose of instantaneous intercommunication with him.

Ministers' offices—say eleven, twelve, or thirteen, as above, disposed in a *crescent:* a *crescent*, or else—what, to the purpose here in question, would serve equally well,—instead of any such *fragment* of a circle, one entire circle, or rectilinear *quasi-circle*—a polygon of that same number of sides, circumscribing, or inscribed on, a circle: or an *oval* form correspondently diversifiable. So far as *ventilation* alone is regarded,—if protection against violent winds from particular quarters be not regarded as necessary,—an *unenclosed* space, such as that covered by a crescent, presents itself as obviously preferable to the above proposed or any other plan, by which a thorough draught of air, sweeping the whole, is excluded. In any case, though not necessarily, yet naturally, in the central situation with reference to the rest, would be placed the Prime Minister's office, from whence directions will have to be continually issued.

Instructional. Ratiocinative.

Art. 18. With the exception of the saving in expense, by diminution of the quantity of matter and workmanship employed in the erection of boundaries,—as to the *Election Minister's* office, whether it does or does not form a part of the assemblage, presents itself as being

* Not less simple, than in mathematics the *superposition* principle:—a principle employed in geometrical demonstration, and as such noticed by *D'Alembert* in his *Mélanges*.

nearly if not altogether a matter of indifference. As to the *Legislation Minister*,—the most convenient, if not the only convenient, situation for *his* office is obviously that of contiguity with the edifice appropriated to the use of the Legislature.

Instructional.

ART. 19. In the apartment of the Prime Minister,—from an apt position within reach of the seat occupied by him, issue thirteen *conversation tubes*,* terminating in corresponding positions contiguous in like manner to the seats of the several Ministers in their several apartments.

From the apartment of each Minister to the apartment of every other Minister runs in like manner a conversation tube.

As between one and every other of these fourteen Administration functionaries,—thus is promptitude of oral intercourse maximized.

Ratiocinative.

ART. 20. *Collateral advantage.* By these same means, effectual security is afforded, against an imaginable mishap, the realization of which is not without examples. From office to office, official papers are of course sent in locked boxes. The offices being, many of them, out of sight of one another, and situated at indefinite distances,—the bearers of these boxes have been way-laid, and for some sinister political purpose robbed of them.†

On the above construction,—the messengers, by whom papers are carried to and fro, need never be out of sight of the intercommunicators: by means of wheels within-doors,—boxes, if it were worth while, might even be borne to and fro, by ropes instead of messengers; at the immediately preceding moment, notice being given by accompanying *bells*.‡

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* Note as to the *distance*, to which, for the purpose of *conversation*, sound is capable of being conveyed by means of these same *conversation-tubes*. Between thirty-four and thirty-five years ago,—on the occasion of an experiment, made, by the procurement and under the eye of the author of these pages,—conversation, of course with a velocity which was that of sound, in the tone of ordinary discourse, was carried through a tube of about 350 feet in length, composed, of course, of a number of tubes, fitted one into another, air-tight: *diameter*, according to recollection, between one and two inches. The dimensions of the building were not such as to admit of the drawing out that length into a right line: but, between interlocutor and interlocutor such was the distance, as to render otherwise impossible any such communication, without the greatest exertion, if it could be held at all, at any such distance as that at which it actually had place.

Much about that time,—information was received from several quarters, of an interchange of sounds as having been produced at more than a mile's distance between the two ends of an antique watercourse, somewhere in the North of England.

About twenty years before that time,—observation had by the persons in question been made of conversation habitually carried on in a low tone, between the top and the bottom of a high house in *Cornhill*, London. The year, in which, in a work intituled *Panopticon*, or the *Inspection House*, the universal inspection principle, with this feature belonging to it, was published and circulated in government circles, was 1791. Since that time, this instrument has, in London, found its way into several public offices, among which is the *Custom House*.

† In the London Offices, particular instances of this mishap have reached the ears of the author of these pages.

‡ So in the case of prisons. If, in any shape, abuse has existence in any place at any time,—it is because, to the extent which, with the utmost facility, in any place at any and every moment of time, it might be made to have place, *inspection*—say rather inspectedness—has not place: inspection, by individuals at large; inspectedness, on the part of *prisoners* by the eyes of *prison-keepers*: inspectedness, on the part of prisoners and prison-keepers, by the eyes of individuals at large, in the character of members of the *Public-Opinion Tribunal*. In this case, in England, in a manner of which history will have to speak, a plan, by which, on the part of all instruments, personal as well as real, appropriate aptitude would, as had been demonstrated, have been maximized, expense at the same time minimized,—was, even after having been sanctioned by the legislature, frustrated by personal antipathy, in the breast of an individual higher than the Legislature: instead of it was carried into effect, an establishment, in which, on the part of instruments of both sorts, inaptitude soon became so flagrant, as to break through the integument of Bastille secrecy in which it had been enveloped: expense, in capital more than decupled, expense annual several times multiplied. In general terms, as above, indication of this phenomenon was too analogous and apposite to be suppressed: particulars belong not to this place. In the above-mentioned individual instance, the extinction of the plan had for its cause an accidental and individual state of things. But the degree of neglect experienced by it thenceforward—not in England alone, but throughout the civilized world, and more particularly in France—and this, not a particle of objection to it being uttered anywhere, can scarcely be accounted for, otherwise than by that mixture of cold jealousy and apathy, the influence of which on human conduct is but too frequently visible. Before its receiving the above sanction in England, in France, Lewis the XVI. saw it, and expressed his personal approbation of it: before the reign of that gentlest and least noxious of Monarchs had, along with his life, come to a close,—the inventor of the political part of this plan (the architectural being the invention of his brother) was invited by authority to establish it in that country. In Ireland, at the hands of the local authority, adoption had been given to it and endeavour used towards its being carried into execution and effect,—even before it had received adoption in England, as above. In Spain, in the year 1823, it was recommended for adoption upon a national scale, by a Committee of the then existing Legislature. In England, and perhaps the Anglo-American United States,—the practical adoption of it awaits the death of the two inventors: no expense in the shape of misery and money being (one should

Instructional. Expositive.

Art. 21. Thus much for promptitude of oral communication between functionary and *functionary*.

Now as to the promptitude as between functionaries and *suitors*,—together with exclusion of needless delay, vexation and expense: vexation, by haughty or negligent demeanour on the part of the functionary, and by unjust favour in respect of priority of audience.—Follows the remedy, in so far as applicable by architectural arrangements.

Waiting-boxes. By a *Waiting-box* in a Minister's office, understand—a compartment, into which a suitor or set of suitors are admitted, there to remain while waiting for audience: seats, in each, from two to eight: in *tiers*, one above another—one, two, or three —as in the boxes of a theatre.

Form of each office—suppose, on the outside, a polygon of *thirteen* sides: *eleven* of them constituting the exterior boundaries of so many of these *Waiting-boxes:* the two others contiguous to each other,—use, giving to suitors—the one entrance, the other, exit. As to these see Art. 30.

Of the eleven, nine contiguous to each other, termed *Public boxes:* these, for the reception of suitors in whose instance no secrecy is required.

Private boxes, (as to which see Art. 26,) two: one at each extremity of the line of Public boxes. Should the number be found or predetermined insufficient, it might be increased by two or more, at the expense of that of the *Public-boxes*.

In each Public box,—the interior boundary a correspondent parallel to the exterior.

About the centre of the polygon,—a counter, or rectangular table, with seats for the Minister, and one or two Registrars or clerks for registration.

Between that part of the table which is nearest to the interior boundary of the annular or say quasi-annular line of Waiting-boxes, —an *open area*, of greater or less extent according to convenience, into which opens a door waist-high, by the opening of which any person in the box may, in case of need, on permission, pass to the table.

Between the Minister's table and the exterior boundary of the line of Waiting-boxes, the distance not so great as to afford any obstruction to oral intercourse.

By this consideration, the necessary limit will be set to the diameter of the ground-floor of the whole building.

Exterior to the exterior boundary of this annular line of *Waiting-boxes*, a correspondent line of *passage:* along it the suitors make their way all round to the several Waiting-boxes: he who comes first, moving on to the box which is furthest from the entrance.

Height, not exceeding what is requisite for ventilation.

Light, received into it from the top.

The boxes distinguished from one another by *numbers:* each number expressed in figures over the exterior door of the box, to wit, that which opens into the passage, as also over the interior door, which opens into the above-mentioned area.

Without and within these Waiting-boxes, —in type and numbers such as to be visible to all eyes, are exemplars of the two Tables, as per Section 25, *Securities, &c.*, Arts. 10, 11, and 12. Table I. *Functionary's Deportment Rules:* Table II. *Visiter's Deportment Rules.*

Ratiocinative.

Art. 22. *Uses* of these same public Waiting-boxes. 1. Service rendered by the population of them, in securing and augmenting the *publicity* of everything that passes: this, in like manner as by the *Judicial Inspectors* in a Justice chamber, as per Ch. xvii.

2. Like service, by securing observance to the above-mentioned rules of deportment.

Instructional.

Art. 23. Into the central part occupied by the Minister, light is let in, by windows running all round the roof, at an elevation higher than that of the *passage*.

Instructional.

Art. 24. All this, on the same level; that is to say, the *ground-floor:* over it, in stories of any number, are apartments or assemblages of apartments, called collectively the *Treasury*, appropriated to the purpose of giving stowage to the official books and papers. As to this, see below, Arts. 38. 43.

Instructional.

Art. 25. To a set of these apartments may, if the situation be approved, be added another for the habitation of the Minister and his family: but see Art. 38.

Instructional. Expositive.

Art. 26. *Private Waiting-boxes.* By a private waiting-box, understand a box having for its destination the affording audience to suitors in such manner, that, in the instance of such suitor, not only the purport, but even the existence, of his intercourse with the Minister, while sitting in his central part of the room, as per Art. 21,—shall remain, for the requisite time, unknown to all persons, but such, if any,

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think) in the minds of those on whom it depends, too great to pay for exemption from the mortification of seeing the inventors reap so much as the satisfaction of witnessing the adoption of it, unaccompanied by remuneration in any other shape.—[The correspondence, illustrative of the author's attempt to put in practice his Panopticon, and its failure, with a narrative of the circumstances, will be found in the memoirs and correspondence, as printed in this collection. The Panopticon plan will be found at length in vol. iv.—Ed.]

to whom the suitor or the Minister shall have communicated information of it.

Instructional.

ART. 27. Number of these private waiting-boxes, two: one at each extremity of the ring of public waiting-boxes. But, from that part of the passage which gives admission into the public waiting-boxes, the part which gives admission to the private ones is separated by a thick wall.

For the efficient cause or causes of demand for such privacy, see below, Art. 32.

Instructional.

ART. 28. Across the Minister's office, in the direction of the *diameter* of a circle (the diameter being drawn at right angles to the middle part of the ring of the above-mentioned public waiting-boxes) or of a *chord* parallel to the diameter, runs a partition, closed by a door or curtain, by the opening of which the Minister makes his entrance to the table, to give audience to any part of the population of the public waiting-boxes. On his return at any time through the aperture, he gives audience to the individual or individuals in either of the private boxes as above.

Between the construction of the *public* and that of the *private* waiting-boxes, the only considerable difference is,—that in the *private* boxes, the side partitions, instead of being of any degree of thinness, must be of such a thickness, as to prevent the communication of *sound*: and, to the same purpose, like regard must be had in the construction of the floor and ceiling.

Instructional. Ratiocinative.

ART. 29. Moreover, in the case of the private boxes, the area between them and the Minister's table cannot be so spacious as in the case of the public boxes: nor would there be any use in its being so. A correspondent portion of space will thus be free, capable of being allotted to other purposes.

Instructional.

ART. 30. In that part of the circle which is opposite to the part occupied by the *public* waiting-boxes,—and thence, with reference to *them*, *behind* the above-mentioned *partition*,—is a sort of *hall* or *vestibule*, equal in *extent* to at least two of those same public waiting-boxes.

In the middle part of its exterior boundary, —which is that of the whole building,—is an outward door, which opens into the street, and thus gives admission to all persons indiscriminately.

After continuing undivided for some part of the space, this hall gives admittance to whatever stair-case or passage may be deemed necessary for communication with the several parts of the building: for example, with the apartments of the several superior stories, and the annular exterior passage, which, as above, leads to the waiting-boxes.

On his entrance at the above-mentioned outward door,—a visitant sees, on each side of the hall or vestibule, a *passage* with two *doors* in it, in a right line with one another, divided by a wall into two equal halves: the *outward* half gives admission to the public waiting-boxes on that side; the *inward* half to the one private waiting-box on that same side: the two doors which give admission, the one of them to the exterior, the other to the interior half passage, are both in the same right line: the half passage which leads to the private waiting-box has, besides the just-mentioned door, another opening sideways into the half passage which leads to the public waiting-boxes; by this means, at his exit into the vestibule, the secret suitor has his option—whether to pass into it *directly*, or through the *medium* of the half passage that communicates with the public waiting-boxes.

A suitor, whose audience in a private box has been finished,—to make his exit unperceived, watches the time when either there is no person at all in the vestibule, or no person in relation to whom he has any apprehension.

For enabling the *secret suitor*, at his exit, to see into the vestibule without being seen from it,—a small hole closed by a glass would suffice: the situation of it being at an elevation to a certain degree above that of the human figure, and a step or steps being provided for enabling him to ascend to it. Of the purpose here in view, a general conception being thus conveyed,—an intelligent architect will, it is supposed, find little difficulty in giving effect to it in any one of a variety of particular ways, adapted to local circumstances.

Instructional.

ART. 31. For further security, if deemed necessary, a passage *under ground* may be provided, opening into an exterior *open* passage, with a *sentinel* at the end of it, by whom all persons are precluded from the faculty of making observation of the persons coming into it, or going out of it.*

Instructional.

ART. 32. Cases in which justificative causes

* Had the usual imitative means of representation been employed, the diversifications which the diversities of place and time may be found to require, might thus have been kept out of mind: and a peremptory objection to this or that particular diversification might have been regarded as constituting an equally peremptory objection to every other diversification that could have been employed.

In the shops of London pawnbrokers, a frequently exemplified mode of situation and construction has been—one door opening into an obscure court, for giving unobserved entrance to bashful *pledgers*: another, into a frequented street, for giving information and entrance to all classes indiscriminately including purchasers and unapprehensive pledgers.

for privacy of the intercourse between minister and suitor may have place. *Examples:*—

Loss, already fallen—or, unless prevented, about to fall—on the public service. For a list of the several forms of which such loss is susceptible—a list endeavoured to be rendered all comprehensive, see Section 7, *Statistic function*, Bissect. iv. *Loss Books.*

Instructional.

Art. 33. *Motives*, capable of giving birth to such information on the part of a suitor. *Examples:*—

1. Benefit *naturally* resulting to him: to wit, from the termination or prevention of the efficient cause of loss: as where, by a fair trader information is given of contrabandism.

2. Benefit, sought in the shape of remuneration from *government* by the hands of the minister. *Example:*—Case the same:—except that the informant is not, in this case,—as in the other case it may happen to him to be,—in a situation to reap any such naturally resulting benefit, and *that* an adequate one. For illustration, this one example may suffice: the subdepartment, from the business of which it is taken, is that of the *Finance Minister:* but the like example might alike have been furnished from most of the other subdepartments.

Ratiocinative.

Art. 34. Question. Why, in a case of this sort, admit the information to be *secret?*

Answer. *Reasons.* I.—Liableness of publicity to convey to a delinquent or to delinquents information, enabling them to elude the operation of the appointed *remedies:* to wit—

1. In *all* cases, the *punifactive* and thereby *subsequentially-preventive.*

2. In many cases, the *satisfactive*, including the *compensative.*

3. Where the offence is continuous, the *suppressive.*

4. In so far as the mischief is as yet in contemplation only, the *preventive.*

II. Need of temporary secrecy, to secure the information from being suppressed by fear of the disrepute liable to be attached to the exercise of the function of *informer.*

III. Ill-will and ill offices on the part of the delinquent, and persons especially connected with him—by the tie of interest, self-regarding or sympathetic.

Be the act what it may,—where motives, adequate to the production of the requisite information, have place,—it may be presumed that a correspondent probability of such prevention or suppression will thus have place: where no such adequate motive has place, the evil practice will go on unpunished. Note, that the disrepute so generally attached to the character of informer can scarcely have any other cause than a correspondent depravity in the character of the laws. Of that depravity it is accordingly everywhere strongly presumptive at least, if not of itself conclusive, evidence.

Ratiocinative.

Art. 35. *Objection answered.* No reward! (cries an objector:) no reward in this case. If true, the information will have been given by the pure motive of regard for the public good: given for the sake of *lucre*, it will have been false.

Answer. 1. But, this same *lucre*—what is it that the word designates? Nothing more than the matter of *reward*, that is to say, the matter of *good*, applied to the purpose in question, with intimation given—that, to him who is speaking of it, the application made of it is an object of disapprobation; but without any intimation, of the *ground* on which that sentiment is entertained.

2. Admit the objection to be a valid one, a consequence is—that no offence—no mischief producible by an offence—should ever be prevented;—except in a case, which, for this purpose, presents persons in sufficient number, who are content to sacrifice, each of them, his own interest to a comparatively small interest on the part of the public,—and act accordingly.

Ratiocinative.

Art. 36. As in any other way, so in this—to oppose discouragement to the proceedings necessary to the prevention of an offence, is to act as an accomplice.—*Question.* You yourself,—have you ever made any such sacrifice?—out of a hundred such sentimentalists, not more perhaps than one is there whose answer would not be in the affirmative: yet not so much as one, perhaps, is there in whose instance it would be true: that which in the language of sentimentalism is a sacrifice of private to public interest, being but a sacrifice of a self-supposed private interest in one shape to a self-supposed private interest in another shape: for example, of an interest corresponding to the love of power, to an interest corresponding to love of reputation:—of that reputation, of which power is the expected fruit.

Instructional.

Art. 37. The determination to exclude *all false* evidence—is it an absolute one? included in it then is the determination to exclude *all* evidence. For where has ever been the piece of evidence, in relation to which, antecedently to examination, it could have been known not to be false?

Instructional. Ratiocinative.

Art. 38. Attached to the official apartment of a Minister, (including the *treasury* thereto belonging,) and under the same roof—shall there be or not be, a mass of building, with the appurtenances, provided for the *habitation* of the Minister and his family?

Reasons for the affirmative.

1. Saving in respect of the roof.

2. Protection against *furtive abstraction*—or say *robbery*—particularly by night.

3. Assurance that, by this means, the Minister will be, generally speaking, on the spot.

Reasons for the negative.

1. If an *habitable part* be to be added,—there must be, for the subdepartments of the eleven or twelve Ministers taking directions from the Prime Minister, that same number of ministerial habitations. But, as per Section 2, (*Ministers and Subdepartments*,) what may happen is—that, for several subdepartments, one and the same Minister may suffice: in this case, so many unions or reunions, so many masses of superfluous expense.

2. The number of the persons, of whom the family of a Minister is composed, admits of an indefinite number of diversifications. But, of the habitations thus provided, the aggregate mass will require to be sufficient for the most numerous family; and, in this sufficiency will be included, a proportionate superfluity and excess, with the correspondent wasteful expense,—in every instance, in which the actual number falls short of the number thus arbitrarily assumed; and this excess may be to be repeated upon any number of habitations, not exceeding the eleven or twelve.

3. As to the Minister's being always on the spot,—by his having a *habitation* on the spot, no complete security will be afforded for his being himself *constantly* in that same habitation, nor of his being accessible when he *is* there. Other and more appropriate arrangements, the nature of the case affords, as per Section 25, *Securities*, by which this accessibility is capable of being secured. Understand always—at the *times* at which the business requires his presence at office hours in the official apartment. But, every year, a portion more or less considerable of his official time will be to be employed in *Inspection visits*, as per Section 9, *Inspective function*.

4. Suppose no such appendage attached,—the habitation, occupied by each Minister, will be that, which, in the judgment of the most appropriate judge, is best adapted to his wants and means in all respects. As to the expense,—it will, in both cases, be taken into the account, on the occasion of the offers made by candidates, on the occasion of the *pecuniary competition*, as per Section 17, *Located how*.

Instructional.

ART. 39. This same instrument might, and naturally would,—every part of it—serve, at the same time, for both the *matériel* and the *personel* of both departments—the Legislative and the Administrative:—for the *personal* as well as *real* stock—for the functionaries belonging to the two departments, as well as for the dead portion of the public property.

Instructional.

ART. 40. Compare, with a view to comparative importance, the prime subject-matter of preservation in the case of a representative democracy as here, with the corresponding subject-matter of the like care so universally bestowed in the case of the Monarch: the absence of all expense in the one case, the enormity of the expense in the other: the needfulness in the one case, with the uselessness in the other: more particularly in the case of those whose attendance is paid on his migration from place to place. Behold, in the case of the Monarchy, a virtual certificate—that, under that form of government, the state of perpetual insecurity,—into which, for the increase of the inordinate prosperity of that one individual, the subject millions are kept plunged,—is shared with them, at the same time by that same unit, to whose interest in this shape, a sacrifice, so enormous, of the universal comfort of those same millions, is not grudged.

Instructional. Ratiocinative

ART. 41. Note well—that, in the organization of this compound instrument of security, an indispensable condition is—that the individual elements of the fictitious body be frequently changed. A Prime Minister for life—with an unchanging body of men—though in number, for example, not more than *fifty*, under his command,—encompassing at the same time his residence, and that of the most confidential and highly empowered servants of the people,—might sooner or later become a *Pisistratus* with his fifty yeomanry, or a *Roman Imperator* with his Prætorian guards.

Instructional. Exemplificational.

ART. 42. Subsidiary arrangements, requiring to be connected with, and adapted to, those which belong strictly to Architecture alone, are—arrangements for the security of the buildings, their appurtenances, and contents, against *loss* by whatever causes—physical or psychological—produced.

Of such loss examples are—

1. Destruction by conflagration.

2. Destruction on deterioration by other physical causes at large.

3. Furtive abstraction.

Instructional.

ART. 43. Subject-matters, the preservation of which is of prime importance are—the literary contents of the *treasury*; more particularly those in manuscript. But, so far as regards the manuscripts, the evil from loss is already minimized: to wit, by the universal *registration* and *publication* system, as per Ch. viii. Sections 10, 11.

Instructional.

ART. 44. Of psychological causes of indiscriminate *destruction* and *deterioration*, examples are—

1. Ill will on the part of a *foreign* adversary.

2. Ill will on the part of *internal* adversaries, as in the case of popular commotions.

Instructional. Exemplificational.

Art. 45. Of psychological causes of *furtive abstraction*, examples are—

1. Desire of the matter of wealth in the ordinary case: to wit, that in which the subject-matter possesses intrinsic marketable value.

2. Indirect advantage, from the loss of the subject-matter to a party on one side, or the acquisition of it to a party on the other side, over and above any marketable value which it may happen to it to possess.

Of furtive destruction or abstraction thus produced, individual examples have every now and then transpired.

Instructional.

Art. 46. Follow *correspondent safeguards.* Even in a Republic, established with the best possible constitution, a purposed destruction of public property by popular commotion, should not be regarded as too improbable to need guarding against. The love and veneration of ten millions at a distance might be an altogether inefficient protection, against ten dozen of individuals, impregnated with effective malevolence in this shape, whether by inbred error, or by fraud and mendacity from without: in which case,—by resentment, produced by the conduct, real or supposed, justly or unjustly regarded as culpable on the part of this or that Minister,—the public treasure in this shape—the whole or any part of it—might be made a sacrifice.

Instructional. Ratiocinative.

Art. 47. Sole adequate as well as appropriate security in this case—a *military guard.* Minister, in this case, specially charged with the *directive* functions, and responsible for the exercise of it—the *Preventive Service Minister.* —Subordinates, draughted from the professional subordinates of the Army Minister. By the employment of *non-military* functionaries for the purpose,—for example, under the name of *Watchmen* or *Porters,*—appropriate aptitude would be lessened,—remuneration, the whole of it, expended in waste.

Instructional. Exemplificational.

Art. 48. Thus much, as to that which might have place—might, should, and everywhere, if the good of the whole community were the end aimed at, would have had, and have place. What can be more obvious? What more simple? What more effectual? What more easily effectible?

Look round now everywhere,—and everywhere behold what actually has place.

Turn first to Monarchy. Here, the all-determining principle is—that, as beasts in general are made for the use of men in general,—so, in each community are men—all of them but one—made for the use of that one: of this universal slave-holder, the *duty* (for he too has his duty) is—as in all other matters and on all other occasions, so in this matter and on this occasion—at every moment of time whatsoever, to do that which, at that same moment, is most agreeable to himself.

Of these two-legged beasts of draught and burthen, corresponding and proper state—that of *slavery* under that *one: domestic* slavery, did the nature of things admit of it: but, the nature of things not being thus tractable, then that which comes nearest to it,—to wit, *political* slavery.

Instructional.

Art. 49. Thus, as to all operations and all arrangements in general: this same all-comprehensive principle—apply it now to those arrangements in particular which apply to Architecture, and thence to the habitual *official residence* of the chief functionary, and his chief subordinates.

That which the greatest happiness of the greatest number requires, is—that at each moment of time, the residence of each functionary, and in particular of that one whose functions are of most importance, should be on that spot, on which his service, reference had to the greatest happiness of that same number, would be of the greatest use. Correspondent, howsoever opposite, is the arrangement as to place, in the case of this all-ruling *one.* That which *his* greatest happiness requires, is—that, without communication received of his will and pleasure, no operation which is regarded as being of adequate moment with reference to such his happiness, is ever to be performed. When, with the utmost possible despatch, the welfare of the community requires this or that thing to be done, which cannot be done but by this or that next highest functionary, nor by him without verbal communication with this highest,—how great between the two functionaries the distance is —distance in place and thence in time,—with the consequent delay, vexation and expense, —is not worth a thought. His official abode being in the metropolis, is it at any time his pleasure to be at twenty miles distance, the *delay* correspondent to those twenty miles is to have place: if sixty miles, the delay correspondent to these sixty miles; and so in the case of 400 miles, whether by land only, or by land and sea, with all the uncertainties resulting from that mixture.

Instructional.

Art. 50. On this or that occasion, what is the evil that may not have had its origin in this cause? But why mention it? Who ever heard anything about it? What minister, except for the fatigue to self and friends, ever cared about it the value of a straw.

Instructional.

Art. 51. What then is the remedy? To have a Monarch, and keep him in a state of confinement? No surely. What then? Not

to have any functionary, but one by whom, for the power and so forth attached to the office, the confinement would be submitted to with pleasure.

Instructional.

ART. 52. While the Monarch is upon his rambles in pursuit of pleasure,—wretches by dozens or by scores are kept suspended between life and death, waiting their doom. True it is—that, in this case, combined with the all but most unapt form of *government*, (for pure aristocracy is still worse,) is the most unapt form of *punishment*. But this, though the most conspicuous, is but one drop, in the current of inscrutable evil, flowing from the same source.

Instructional. Exemplificational.

ART. 53. In the United States, the offices belonging to the subdepartments, together with the residence of the Prime Minister, styled *President*, are under the same roof: the whole edifice being styled *the Capitol*. But, neither has the circular nor the polygono-circular plan of construction been employed: nor, for aught that appears, the *Conversation-tubes*. For the designation of the several departments, four denominations and no more are there employed, namely, 1. State; 2. Treasury; 3. War; 4. Navy.—See the Plans in "The New National Calendar" for 1821.

Instructional. Ratiocinative.

ART. 54. As to the office of the Justice Minister,—this should rather be *remote* from, than contiguous to, the above-mentioned cluster of offices. Between the Administrative Department and the Judiciary,—the less the unseen and unheard communication, the better.

CHAPTER X.

DEFENSIVE FORCE.

SECTION I.

Branches, what.

Instructional. Expositive.

ART. 1. Of the Army and Navy subdepartments mention may be seen made in Ch. ix. MINISTERS COLLECTIVELY. Section 2, *Ministers and Subdepartments*. On the present occasion, the businesses and operations respectively carried on in them, having one common object, to wit, *National Defence*, though pursued mostly by the use of two different sets of instruments, (personal and material * included,) the two subdepartments may, with a view to that same object, be on the present occasion considered as constituting one compound subdepartment, styled the *National Defence Subdepartment*.

Expositive.

ART. 2. Throughout this Code, under the appellation of *Sea-Service*, is meant to be comprised whatsoever service is performed in vessels constructed, in respect of bulk or form, in such manner as to be designed, or fit, for the being employed in the open sea; whether the tract of territory, in which, at the time in question, the vessel in question is actually employed, be part and parcel of the open sea, or an *inlet*, running from the sea into the land: and whether the quality of the water be salt, fresh, or mixed.

Instructional. Expositive.

ART. 3. For the detail of the arrangements for National Defence, see the *Army and Navy Codes*. To the present Code belong those principles, rules, and arrangements, which have for their object the securing to those same arrangements a character in harmony with that of the other parts of this same Code.

Expositive. Instructional. Ratiocinative.

ART. 4. By the words *National Defence*, as applied to these two subdepartments considered as one, manifestation is made—that, of the arrangements thereto belonging, *defence* is the sole object; and that offence and aggression, as towards other nations, much more *conquest*, are repugnant to the essential and leading principles of the constitution delineated by the present Code.

Expositive.

ART. 5. Considered with reference to origin, the National Defence force requires to be distinguished into two branches—the Radical and the Excretitious: the Radical the root from which the Excretitious derives its existence, and the members of it their subsistence. Of the Radical force the members naturally unpaid; for pay to all by all, would be pay to none: of the Excretitious, paid: whence they may be also called the Stipendiary.

Expositive.

ART. 6. Considered with reference to the elements on which their respective operations are principally carried on, the branches into which this same force requires to be distinguished are—1. The *Land Service*, or say *Army branch*: 2. The *Sea Service*, or say *Navy branch*.

Expositive.

ART. 7. From the two sources of distinction taken together, come four branches of the National Defence Force: to wit—1. The Radical land-service branch. 2. The Stipendiary land-service branch. 3. The Radical sea-service branch. 4. The Stipendiary sea-service branch.

* *Personnel, Matériel.* Distinctions established in French language and practice.

Instructional.

Art. 8. Of all these four branches, first for the most part in order of existence, and thence in the order of necessity, is the Radical land-service force. In each state (exceptions excepted) the individuals of which it is composed will be—all such members of the community as are, in a physical sense, capable of contributing to the purpose in question; to wit, National Defence.

Instructional.

Art. 9. In an early and immature state of society, the labour and peril of defence against hostility from without, has, without exception, been the lot of all who were capable of contributing to it: in case of extreme necessity, even the weaker sex has not been altogether exempt from it: for, for the support of this portion of the aggregate interest, no fund having in that state of things been formed, no separate class of functionaries could have been charged with, none therefore exempted from, the care of it.

Instructional.

Art. 10. Of the land-service force, the Stipendiary portion is but as a twig growing out of, and nourished by, the Radical branch. Though in respect of its quantity capable of being augmented, and but too liable and apt to be augmented to excess, the existence of it is the result and evidence of a considerable progress made in the career of civilisation: forasmuch as thus, by means of a comparatively small portion withdrawn from the care of producing the matter of subsistence and abundance, the whole remainder of the population is left free, without obstruction, to employ itself exclusively in maximizing the aggregate mass of the matter on which life and prosperity depend. Thus much, as between the two branches, or say sub-branches, of the LAND *service force.*

Instructional.

Art. 11. Now, as to the *sea service* and its two corresponding sub-branches. Considered in respect of the order of existence and necessity—that is to say, in respect of the extent to which the necessity of its existence has place—the land-service force, radical and stipendiary branches together, claims the precedence over both branches of the sea-service force. So, likewise, considered with reference to degree and extent of use. For—(the comparatively small portions excepted, which are employed in the business of fishery on a large scale)—those pre-eminently extensive portions of the globe, which being covered with water are called *seas*, are but so many means of communication, so many *water roads* as it were, between those several portions of the earth's surface which, not being covered with water, give habitation and sustenance to the several communities of which the human race is composed. No political community ever had place, the members of which had not their habitation and means of subsistence mostly on dry land: at all times, many have had place, the members of which neither had in the sea their place of habitation, nor so much as in their own power any means of immediate communication with it.

Exemplificational.

Art. 12. At this day, in Europe no such means have the kingdoms of Bavaria, Wirtemberg, or Saxony: no such means has the Swiss confederacy, composed of Republican states, Aristocratical and Democratical together.

Instructional.

Art. 13. As in the instance of the majority, if not the whole number, of political communities, past and present taken together, the sea-service force has been, and is, but as it were a twig growing out of the land-service: so in the sea-service force, the stipendiary is and has been, but as it were a smaller twig growing, and how commonly soever not necessarily, out of the radical branch.

Instructional.

Art. 14. Posterior, as above, in the conjunct scales of priority of existence, necessity, and extent of the demand,—the stipendiary branch of the sea service is prior to all the other three branches of the defensive force in *dignity*, in so far as, on the part of the functionaries, dignity is proportioned to quantity of demand for appropriate intellectual and active aptitude: aptitude bearing in this case reference to a considerably greater number of mutually different operations than in the case of the radical branch in that same service, or in the case of either branch of the land-service.

Instructional. Ratiocinative.

Art. 15. As in the present state of the art of war, to put and keep himself in a condition to act with adequate effect in the capacity of a constituent part of the stipendiary defensive force, must, generally speaking, occupy of necessity so much of a man's time, as not to leave him in possession of a stock of it sufficient for the providing himself with the means of subsistence; hence the necessity, in virtue of which every man so occupied, must be provided with those means at the expense of those by whose labour the stock of the means of subsistence and enjoyment is continually brought into, and, consumption notwithstanding, kept in, existence: and, as the stock of those means which would otherwise have been brought into existence, is diminished by every quantity of human time and labour employed in giving security to it by contributing to the efficiency of the mass of the defensive force;—hence,—without a loss of the means of subsistence and enjoyment—loss to such an amount as never has been submitted

to, nor is likely to be submitted to, by any political community—hence it is, that the number of the individuals acting as members of the stipendiary part of the national defensive force, has always been, and will always be, small, when compared with the remainder of such of the inhabitants as, in respect of age and sex, would be capable of serving as component parts of it.

Instructional.

ART. 16. But while the number of them is thus comparatively small, their power of exerting force with effect,—and this for the purpose not only of defence, but of offence likewise,—will, in equal numbers, be comparatively great. And it being necessary not only for the actual exercise of their appropriate functions, but also for the putting and keeping them at all times in a state of preparation for it, that they should be kept together in bodies more or less numerous; hence it is, that they are at once a source of security on one account, and of danger on another.—See Section 2, *Leading Principles*, Arts. 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27.

Instructional.

ART. 17. Of danger, in two ways; the danger being capable of taking its origin in two different descriptions of persons: 1. The Commander in Chief, under whose orders they are, all of them, at all times acting; and 2. Any subordinate leader or leaders appointed to act in subordination to him.

Instructional. Ratiocinative.

ART. 18. In the stipendiaries belonging to the sea-service branch, no such source of danger is perceptible. The element on which they act keeps them in a state of comparative separatedness; and at the same time mostly at an uninfluential distance from the seat of the legislature.

Expositive.

ART. 19. That which in the land defensive force the radical branch is to the stipendiary, in the sea defensive force the private navy is to the *public*, or say the *government* navy. The *private navy*, which, as above, may also be called the *Radical navy*, is composed of those navigable vessels which belong to individual proprietors; their crews serving either in vessels of their own respectively,—or for hire, or otherwise, in vessels belonging to other persons.

Instructional. Ratiocinative.

ART. 20. *Uses.* Considered in kind, of the Radical sea force the uses are,—the serving eventually as a check, and constantly as a source of applicable supply. But as, in comparison with the danger from the land stipendiary force, the danger to a constitution from the sea stipendiary force is inconsiderable;—so, on the other hand, is the use of it, in the character of a check, as above, correspondently inconsiderable: in its serving as a source of constantly applicable supply, consists its principal use.

Instructional.

ART. 21. As to preparedness,—at the expense and for the account of the individuals interested, the radical sea force, without especial design on the part of those who compose it, is, in its own way, trained, (unarmed or armed as it may happen,) and thus kept in a state of comparative preparedness for eventual military sea-service. Thus much in point of fact. As to the mode in which, and terms on which, if at all, it is desirable that such extraordinary application, and transference should be made of it, see Section 16, *Sea Defensive Force.*

Instructional.

ART. 22. As to Stipendiaries, whether in land or sea service,—under a constitution such as the one here in question,—in a word, under a pure representative democracy, where governors and governed are to the greatest possible extent the same individuals,—the principal and sole constant use of a body of stipendiaries is—that which consists in their serving as an instrument of security against aggression by *foreign* adversaries, actual and eventual. But, moreover, a collateral and highly useful, though but eventual and occasional use, is—the affording aid to the *justice minister* and the *preventive-service minister* respectively, in the application of remedies, suppressive or preventive, against delinquency in various shapes, when operating upon a large scale:—that is to say, upon a scale too large to admit of the mischief's being suppressed or prevented, by the personal force constantly at the command of the directing functionaries at the head of the above-mentioned non-military departments and subdepartments; and capable of being, with adequate promptitude, brought to bear by them respectively upon the place in which the mischief has its seat.

Instructional.

ART. 23. A casualty to which a democratic constitution, like any other, stands perpetually exposed, is—that of giving birth to a knot of malefactors, who, acting in manifest opposition to the ordinary official establishment of the government, constitute thereby a sort of temporary government of their own formation, monarchial or aristocratical as the case may be, waging war upon the government established by law: in which case, although no such prospect should be entertained by them as that of subverting the government which they find established, yet were it not for a body of well-trained military men in readiness to act for their suppression, no limit might be assignable to the quantity of the mischief which, before an end could be put to it, might be produced by them.

Instructional. Ratiocinative.

Art. 24. In each such case, by the Radical force, the same effect might, in the long run, with equal certainty have been accomplished. With equal certainty, yes; but not with equal promptitude: and while the comparatively unwieldy instruments were putting together, mischief may have been produced in indefinite quantity; mischief which, by the immediate use of the prompt and more appropriate instrument, might have been prevented.

Instructional. Ratiocinative.

Art. 25. A use, in some sort intermediate between these same uses, principal and collateral, is—that which applies to the case of a *federative democracy*. *Tyranny* and *anarchy*—to employ such words as language furnishes,—*Tyranny* and *anarchy*, though in forms and degrees much less drastic and afflictive than those which, by reason of the states of things to which they have been in use to be applied, will naturally be brought to mind by these appellations—are two rocks, between which, even in the case of this democracy, the vessel of the state has to steer its course, and upon each of which it is constantly, by violent gusts from this or that quarter, exposed to be driven.

Instructional. Ratiocinative.

Art. 26. Of the confederated states, this or that one omits (suppose) to furnish the agreed contingent towards the common expense of the whole: or, this or that state resists and paralyzes the authority of some portion of the judicial establishment maintained in each state for giving execution and effect to this or that power, conferred, by the terms of the federative constitution, on the general government. If, without apposite and effective remedy, these acts of disobedience to the general will are committed in and by any one member of the confederacy, so will they be, sooner or later, in and by every other; and thus will the whole fabric fall to pieces.

Instructional. Ratiocinative.

Art. 27. For security against every such catastrophe, a body of land stipendiaries, a little standing army,—with or without a portion of permanent *naval* force, according to local situation,—will naturally be kept on foot.

Instructional. Ratiocinative.

Art. 28. But this standing army (it may be said) may, in the hand of the general government, be—and will always be but too apt to be—an instrument of tyranny. Yes, if *ill*-proportioned: but no, if *well*-proportioned: and, to its being well-proportioned, nothing more is necessary than that it should be strong enough to put an end to disobedience on the part of this or that one of the confederated states, without being strong enough to produce that same effect against the defensive force of the majority of the population belonging to the aggregate of the confederated states. Further details belonging not to the present chapter.—See *Ch.* xxxi. Government, simple or federative.

Instructional.

Art. 29. As to the Radical branch, peculiar to a pure republic and mixed form of government is this *security-affording* function of this branch of the defensive force establishment. Preserved from all care of preservation from loss, are all they who have nothing to lose.

Preserved from all care about security against the ruling *one*, are the members of a community governed by a pure monarchy; for that which a man hath not, he cannot fear to lose.

Preserved from all care about security against the ruling *few*, in the same manner, are the members of a community governed by a pure aristocracy.

In none but a republic or a mixed government, therefore, can there be either security or care about security.

Section II.

Leading Principles.

Instructional.

Art. 1. In regard to this composite portion of the establishment belonging to the executive department, as in regard to the several others, the object and endeavour of the legislator will, of course, be—to maximize the appropriate aptitude of it with relation to its several ends.

Instructional. Expositive. Ratiocinative.

Art. 2. These ends are two—positive and negative. First come positive ends. 1. Principal or main positive end, conduciveness to the security against hostility from without. 2. Collateral and secondary positive end, subserviency to any other branch or branches of the public service; to wit, in so far as practicable, without causing preponderant detriment to this present branch.

Instructional. Expositive. Ratiocinative.

Art. 3. Negative ends—1. Minimizing the danger to the supreme authority, and thence to the whole community, from the quantity of force lodged in an authority intended to be subordinate. 2. Minimizing the amount of the attendant evil in all shapes—the burthen in all other shapes—including the *expense* in all shapes—at the price of which this good, this security, is endeavoured to be purchased.

Instructional.

Art. 4. Of the entire establishment, the appropriate aptitude in all shapes will depend upon, and will be in exact proportion to, the appropriate aptitude of the *persons* and *things*,

of which the stock belonging to this compound subdepartment is composed.

Instructional.

ART. 5. As to the subject-matters belonging to the head of *things*, the consideration of aptitude on their part is a subject not belonging to the present head. Considerations having for their object the maximization of this or any other part of the Government stock taken in the aggregate, that is to say the augmentation of it in proportion as the expense allotted to the purpose will admit, may be seen in Ch. ix. MINISTERS COLLECTIVELY—Section 7, *Statistic function.*

Instructional.

ART. 6. As to the *material* stock, composed of the appropriate *things*, for what regards the *choice* of them, see the Military Code, and the temporary and local regulations and mandates from time to time grounded on it. As to the mode of keeping *account* of them, see Ch. ix. Section 7, *Statistic function.*

Instructional.

ART. 7. In so far as regards the *personal* stock, the appropriate aptitude of this branch of the establishment will be as the appropriate aptitude of the several *persons* of whom it is composed. The rendering their operations subservient to their above-mentioned appropriate ends, belongs, as above, in detail, to the Military Code; but when considered in a general point of view, and with reference to their effects on the constitution, it belongs also to the present Constitutional Code.

Instructional.

ART. 8. With reference to these ends, all other arrangements which present themselves as conducive to the accomplishment of them, may, in proportion as apt names can be found for the designation of them, be stated as *subordinate ends*, or, in one word, *means*. Of this distinction indication having thus been given, a convenience will be found in bringing them to view together, main and subordinate, in one list.

Instructional.

ART. 9. Connected with, and correspondent in signification to, the words *ends* and *means*, are the word *rules*, and the word *principles*.

Expositive.

ART. 10. An *end* being assumed as fit to be aimed at, by the word *rule* is expressed, in a general way, a proposition indicative of a course of action, by the maintenance of which, it is by him who lays down the rule supposed, that, with or without the aid and observance of other rules, probability will be given to the attainment of that same end.

Instructional. Expositive.

ART. 11. But, a rule consists of a number of words, which, in the logical sense, compose an entire *proposition*, or say in more ordinary language, an entire *assertion**; and as in one and the same *proposition*, in one and the same *rule*, may be contained *words* in number abundant, and altogether indeterminate,—hence it is that, for bringing, or rather for recalling to view, a conception more or less clear correct and comprehensive, of the matter of a *rule*, a single word, the word *principle*, is by universal experience, found a convenient and serviceable instrument: and, so far as this employment is given to it,—for every *rule*, we either have already, or are authorized to devise and employ, a correspondent *principle*. Sometimes also, by one word employed as the name of a *principle*, rules more than one,—rules even in an indefinite number,—may be recalled, or even brought, to view.

Instructional. Ratiocinative.

ART. 12. Of the two branches of the defensive force, the most convenient standard of reference, fittest therefore to occupy the first place in the order of exposition, though latest in the order of existence, is the *Stipendiary*. It is among the fruits of civilisation; the products of appropriate art and science. Being of the two branches so much the more efficient, it is the only one which, in more or less amplitude, is at present to be found in existence in every political community. It is the only one that suits that which is everywhere the *actual* end of government; namely, the prosperity of those by whom the powers of government are possessed. This being accordingly everywhere the subject-matter of superior culture,—the *radical*, of inferior culture or of none,—the radical has everywhere pined or withered under the shade of it. In it accordingly, is to be looked for the complete list of those properties, on the possession of which

* True it is, that rules may be mentioned, for which in many and probably in all languages, complete expression may be found given, in and by a single word: the word employed being, in the language of grammarians, a *verb*, employed in the mood styled by them the *imperative*. But, in this one word, may be seen the matter of an entire *proposition*. Thus, on the occasion of the operations belonging to the military exercise, the occasion being previously understood, the word '*Fire*' suffices for giving expression to a *mandate*, which, though the action commanded by it is but individual and not generic, may yet be considered as coming under the import associated to the word *rule*. But, by every *verb* in its imperative mood, is expressed, though in a thus abridged form, the substance of an entire *sentence*, or say *proposition; sentence*, in the language of *grammarians; proposition*, in the language of *logicians;* a proposition, in and by which the matter of an entire assertion is conveyed. This is as much as to say, "My will is, that you perform an act of that sort by which a person will produce the effect indicated by this word which I am speaking."

the aptitude of the system for its purposes, real or professed or both, depends.

Instructional.

Art. 13. In each of the two branches, so many of these desirable *properties*, so many *principles*. Under the head of each branch, follows a list of the *properties*, thence of the *principles*, belonging to it: the two lists being, for mutual illustration, placed column-wise, side by side.

I. *Stipendiary Branch.*	II. *Radical Branch.*
1. External security maximizing.	1. External security maximizing.
2. Internal security maximizing.	2. Internal security maximizing.
3. Aptitude maximizing.	3. Aptitude maximizing.
4. Number minimizing.	4. Number maximizing.
5. Contentment maximizing.	5. Contentment maximizing.
6. Inequality minimizing.	6. Inequality minimizing.
7. Employment extending, or say diversifying.	7. Inapplicable here.
8. Time occupying.	8. Inapplicable here.
9. Expense minimizing.	9. Expense minimizing.
10. Preponderant detriment excluding.	10. Preponderant detriment excluding.

Instructional.

Art. 14. In these lists will (it is believed) be found words indicative of all the several distinguishable properties which can be stated as being desirable ones: that is to say, as being contributory to the rendering the management of the branches of defensive force in question, conducive to their respective ends. But in the best form which could here be given to it, such is the imperfection of language, that antecedently to the conveying of any tolerably clear, correct, and comprehensive conception, some words of explanation it will be necessary to employ in regard to each.

Instructional.

Art. 15. I. & II. As to the *security maximizing* principles: *external-security-maximizing*, and *internal-security-maximizing*. To neither of the two branches (the stipendiary and the radical) of the Defensive Force establishment, could a title to the possession of the correspondent desirable properties be disallowed; for, in both instances, the propriety of the end in the character of a main end, and the necessity of rendering the means conducive to the attainment of that end, are alike unquestionable. But in the instance of the radical force, a particular import requires to be attached to it, over and above that which belongs to it in both instances In both instances reference is made to an evil, against which, in the character of a source of evil, security requires to be provided: in both instances, this evil is composed of mischief in all imaginable shapes considered as producible by foreigners acting in the character of enemies. But in the instance of the radical force, to this evil is added an evil of the same sort and extent, considered as producible by individuals belonging to the stipendiary force itself, acting in that same character; and against evil from this source, the only source of security is that which is afforded by the radical force.

Instructional.

Art. 16. Thus it is, that while the contributing to security in both its branches is a property common to both these branches of the National Defensive Force, in the instance of the stipendiary, the property of primary importance is that of affording security against danger from without: a property of but secondary importance is that of affording security against danger from within. In the instance of the radical force, the proportion is reversed. In this instance, the property of affording security against danger from without, is but of secondary importance: the property of affording security against danger from within—that is to say, from casual hostility on the part of the appointed guardians,—is the property of primary importance.

For the modes in which the stipendiary force may be rendered subservient to the purpose of internal security, see Section 18, *Collateral employments*, and Ch. xi. Ministers severally, Section 5, *Preventive Service Minister*.

Instructional.

Art. 17. III. *Aptitude-maximizing* principle. Of the *property*, or say *quality*, brought to view by this appellation, the *subject-matters* alluded to bear, (it may be observed,) in both instances, the same generic names, that is to say, *persons* and *things*: *persons*, constituting the *personal* stock of this compound branch of the official establishment; *things*, the *material* stock: of both these subject-matters explanation has been given in Ch. ix. Ministers collectively, Section 7, *Statistic function*. But, as in the two branches of the Defensive Force, compared the one with the other, the individuals respectively belonging to them are in every *individual* instance, different, so, to a considerable extent, will be the description of the *properties* belonging to them, or desirable in them, respectively, when considered in the *aggregate*.

Instructional.

Art. 18. After mention made of the property indicated by the word *security-maximizing*, mention of the property indicated by the word *aptitude-maximizing*, may seem superfluous. But that which the word *security* indicates is but the *effect*; nothing being brought

by it to view in the character of a *cause:* whereas that which is brought to view by the word *aptitude*, is of that same effect the immediate *cause*.

Instructional.

ART. 19. In name and general design, *appropriate aptitude-maximizing* is a property that applies alike to both these branches of the Defensive Force: but in nature and particular description the difference is considerable. In the case of the *stipendiary* branch, the demand for it is at its maximum: in the *radical*, at its minimum. In the stipendiary, it includes not only the manipulationary and evolutionary movements with small arms, but moreover other branches of physical art and science, wide in extent and variety; mechanical and chemical for example—through the medium of fortification and artillery exercise. In the case of the radical force, the small arms exercises, as above, are those with which the members in general will naturally be apt to content themselves.

Instructional.

ART. 20. IV. In the instance of the stipendiary branch, *number minimizing:* in that of the radical branch, *number maximizing*.

By the opposition thus exhibited, the idea of inconsistency will be apt to be suggested; and, but for the requisite explanation, might remain attached. But in the instance of the stipendiary force, when minimization of the number is stated as desirable, what is understood is, that even setting aside the article of expense, under a constitution such as in all other respects the one here proposed would be, the number of these functionaries cannot be too small: the perfect state of things would be—that in which it was equal to 0.

Instructional. Ratiocinative.

ART. 21. Then again in the case of *radical* force. What in this instance is to be understood, is not the *absolute* number, but the *relative* number, relation had to those composing the *stipendiary* force. Why? Because the greater the number of those of whom the radical force is composed, the greater the security against all enterprises, to the temptation of engaging in which the members of the stipendiary force stand exposed.

Instructional.

ART. 22. Here then, between principle and principle, and between desirable property and desirable property, may be seen to have place a sort of relation,—*antagonization*, the existence of which there will be frequent occasion to bring to view: and whenever it has place, a choice will be to be made, and a line drawn, from the consideration of local and temporary circumstances.

Instructional.

ART. 23. To the two mutually antagonizing principles—to wit, the *number minimizing* as applied to the stipendiary force, and the *number maximizing* as applied to the radical force, correspond the rules which follow, with their respective reasons.

Rule 1. Minimize the stipendiary force, so far as is consistent with security against hostility from without.

Ratiocinative.

ART. 24. *Reasons.* 1. Minimization of danger to the constitution from insubordination on the part of these functionaries, and from resistance to, or even forced ascendancy over, their respective superordinate authorities, whether in the military line or the non-military; to wit, the army minister, the navy minister, the prime minister, and the legislature.

2. Minimization of expense,—of the quantity of the expense bestowed upon the service of this compound subdepartment.

3. Minimization of power and disposition, on the part of the government, to engage in offensive aggression against other states, and thence to involve this state in needless and internally pernicious warfare.

Instructional.

ART. 25. Rule 2. Maximize the radical force,—to wit, so far as is consistent with the non-employment of compulsory means for the formation or maintenance of it.

Ratiocinative.

ART. 26. Reasons for the maximization.

1. Maximization of security, and sense of security, against danger of insubordination and ascendancy on the part of the stipendiary force.

2. Giving increase to the chance and facility of affording, without expense of bounty or enlistment, or at less expense, as well as without compulsion, increase in case of need, to the stipendiary force.

Ratiocinative.

ART. 27. Reasons for the *limitative* proviso, —Evil effects the following:

1. On the part of the individuals to whom the compulsion is applied—the correspondent quantity of suffering.

2. Expense employed in the application of this compulsion:—the instrument which must have been employed in the application of it, if it be efficacious, being the appropriate and necessary portion of the stipendiary force: increase thence given to the *quantity* of this most expensive species of force, and thence to the expense of it.

3. A civil war thus raised, between one part of the people alone, on the one side, and one part of the people in conjunction with the stipendiary force, on the other side: thence, danger to the constitution, as per Art. 24.

4. If in any place, in any instance, compulsion employed on this occasion, by the civil power alone,—that is to say, by the small force habitually under the command of the judicial authorities,—has been efficacious,—it is because the degree of reluctance thus surmounted has, either in intensity or in extent not been very considerable.

5. True it is that, in this or that case, it may not be impracticable to employ a part of the voluntarily serving Radical force of one part of the country, in the application of compulsion to the production of enlistment in the Radical branch of the military force in another part of the country: but in this case, by the supposition, commencement is given to a species of civil war; and thus, in the meantime, instead of being strengthened, the aggregate of the military force of the community is weakened.

Instructional. Ratiocinative.

Art. 28. V. *Contentment-maximizing principle.* Peculiar in degree, not to say altogether, to the military branch of the public service, will be seen to be the demand for a principle under this name: peculiar, whether the interest of the public at large, or that of the particular class of functionaries in question, be considered. 1. As to the *public* interest: to contentment suppose, to a certain degree, discontentment substituted. Of discontentment substituted to contentment, possible consequences are—insubordination, mutiny, revolt, subversion of the government;—substitution of a military despotism for whatsoever form of government the people had by habit, with or without affection, been more or less attached to: these consequences, not only possible, but as history shows, to no small extent actually realized.

Instructional. Ratiocinative.

Art. 29. Connexion which the *contentment-maximizing* has with the *expense-minimizing* principle. The worse the treatment, which, by men who are not in the situation, is understood as being given to those who are in it,—the higher the remuneration which, ere they enter into it, they will require: the better the treatment, the smaller the remuneration they will be disposed to accept.

Instructional. Ratiocinative.

Art. 30. 11. Now, as to the private, or say the particular, interest. In every *other* branch of the public service, for the investing of the system with the desirable property here in question, the arrangements proposed in *Ch.* ix. Ministers Collectively, Section 21, under the head of *Oppression obviated*, were regarded as sufficient. But in all those cases, whatsoever of hardship presses upon a man while *in* the situation, he has at all times the power of liberating himself from, by so simple an operation as the going out of it; in a word, by *self-dislocation.* Not only with the use, but with the very existence of the military service, (understand in this case the stipendiary branch,) the existence of this faculty is obviously and utterly incompatible. As there is no sort of practice, how mischievous or foolish soever, for which agreements may not come to have been entered into,—agreements for terms invariably limited, may have been entered into: though, in the stipendiary branch, any such agreement is, in the very nature of the case, void and unfit to be observed: since, by no breach of it on the part of government, is, in any case, any mischief capable of being produced, so great as, in some cases, would necessarily be produced by the strict observance of it. The practical result is therefore, in every such agreement, a reservation of the power of giving to the term any such extension, as a case of necessity, incapable of being described in detail, may at any time happen to require. By a clause to this effect, inserted in the instrument of agreement, discontentment from this source may be effectually prevented: by no other means can it be.

Instructional.

Art. 31. Opposite to *contentment* is *discontentment.* Main source of discontentment in the instance of the stipendiary branch,—treatment *during* the term of service; in the instance of the radical branch, compulsion applied to give *commencement* to the term of service. As to this, see Section 3, Arts. 11, 13, 16.

Instructional. Ratiocinative.

Art. 32. VI. *Inequality-minimizing* principle. In some respects this principle, with the desirable property correspondent to it, may be considered as included, and thence as already brought to view, under another head: to wit, under that of the *contentment-maximizing* desirable property and principle. For as between one person and another, whatsoever inequality is the work of *law*—(which, to the purpose, is as much as to say, of *force*)—is, in proportion to the degree of it, a natural source of *discontentment*: so, of course, any arrangement, the tendency of which is to lessen the effect of that same force, will, in so far, tend to give increase to contentment.

But arrangements may be found, which, while the effect or tendency of them is to lessen discontent in so far as producible in this way, shall not be contributory to the production of it in any other way. Here then will be a reason, nor that an insufficient one, for a separate mention. See Section 8, *Oppression obviated*, Section 10, *Remuneration*, Section 18, *Collateral Employment.*

Instructional.

Art. 33. A consideration obviously presented by the nature and use of the two branches of this service is—that in two cases, as compared the one with the other, the task

of lessening the inequality will be a very different one. As, between *commander* and *commander* inequality increases, so of course will the magnitude and efficiency of the power of command: and the greater the inequality naturally attached to this entire system of factitious arrangements, the greater the difficulty of lessening it by any particular arrangement or arrangements, without producing preponderant evil by lessening the efficiency of the whole of that body of security, which it is the main object of this part of the establishment to provide.

Thus it is that, as with the *security-maximizing* antagonizes the *contentment-maximizing* principle, so in its own particular way does the *inequality-maximizing* principle.

Instructional.

ART. 34. Scarcely on any other account than that of the relation it bears to those other two principles respectively, has the inequality-minimizing principle, as applied to either branch, and in particular to the stipendiary, any claim to notice. But to put the system in possession of the correspondent desirable property, requires a distinct set of arrangements, and consequently, a distinct measure of attention, to prevent the minor from being swallowed up by the major object.

On this occasion, to secure efficiency to whatsoever means come to be employed, a particular degree of attention will be rendered needful by the opposing obstacles.

Instructional.

ART. 35. In the military branch of the public service it is, and more particularly in the stipendiary sub-branch, that the need of inequality is at its maximum. This being obvious to all eyes, hence the danger, lest, by the inconsiderate concurrence of the *popular* with the *legal* sanction, the inequality should be permitted to have place in excess. This tendency seems to be of the number of the most naturally powerful obstacles, with which on this occasion the guardian care of the legislator will have to contend.

Instructional.

ART. 36. VII. *Employment-extending*, or say *diversifying* principle: in the relation borne by this branch of the official establishment to the state of war—joined to the wide difference between a state of war and a state of peace—lies the cause of the demand which has place for the mention of this principle. In no one of the several other departments or subdepartments, is there any place for so sudden a variation as in these two subdepartments, in the quantity of the demand for appropriate official service: in time of war, never can the quantity of service capable of being rendered, be so much as equal to the quantity in demand: and by the indisputable and unchangeable nature of the service, it is rendered necessary, that of each man's time the whole quantity should be at the absolute disposal of the directing functionary on the spot. For extra demands, provision by location of occasional deputies (a provision, in the civil branches of the service so easy and serviceable) is in this impossible. In this branch, in the time of peace, the number of functionaries being supposed the same as in war, the quantity of appropriate service demanded at their hands is, comparatively speaking, next to none. Here, there being a quantity of time left without appropriate employment, and in this sense in a state of *vacuity*, hereupon comes the question—in what way with most advantage to the general interest of the public, and to the particular interest of the class of functionaries in question—in what way, with most advantage to both these interests taken together, the vacancy may be filled?

Expositive.

ART. 37. VIII. *Time-occupying* principle. By the *time* here in question understand, in the case of each functionary, *that* portion of his time which is not occupied in the performance of his appropriate official service.

Generally speaking, it will only be this or that portion of this or that particular day: take, for the subject-matter of consideration, a *series* of days,—either uninterrupted or with interruptions,—and it may be considered as capable of being disposed of on the ground of the *Collateral-employment* principle, as to which see Section 18.

Expositive.

ART. 38. Scarcely in any other line of official service than the military, can any demand have place for the considerations which the mention of this principle is designed to bring to view. Nor, in the military line of service, does the demand apply to any other than the *stipendiary* branch. In the case of the *radical* branch, the greater part of each man's time is employed in more uniformly necessary, or otherwise desirable, occupations. The superfluous part alone, if any, is that which, in that case, can be allotted to the occupation carried on by the performance of official service.

Expositive.

ART. 39. In speaking of the *time-occupying* principle, what is here assumed is, that on the day in question, by the operations strictly professional and exclusively appropriate, the whole of the disposable portion of the four-and-twenty hours will not be filled up. Remains, on this supposition, a quantity of time capable of being employed—with more or less advantage—to government, to the individual, to both, or to other purposes at large.

Instructional.

ART. 40. In relation to the application capable of being made of this principle, *rules* that

present themselves as appropriate are the following:

1. Of the day of a functionary belonging to the stipendiary branch of the defensive force, leave not unemployed, on the account of government, any portion that can be so employed, consistently with his *comfort* and *recreation*.

2. In so far as consists with his *comfort*, give to his *recreations* all such shapes as promise to be in the highest practicable degree conducive to his appropriate aptitude, with relation to the service.

3. By *recreations*, understand on this occasion, such occupations, as, being conducive to present pleasure, are not detrimental to health, or in any other way to the aggregate interest of life.

4. Lest by the idea of obligation and coercion, an occupation which would otherwise be *acceptable*, should by the circumstance of its appearing to be prescribed by government, be rendered *unacceptable*,—let the choice of it, although antecedently made in a general way by the government, be on each individual occasion felt, and by each individual person understood, to be made by himself.

Instructional.

Art. 41. For this purpose, one course is the making provision of *things*, immoveable or moveable, adapted to the purpose of serving as *instruments* of the *occupation* in question, and placing them within his reach.

Instructional. Exemplificational.

Art. 42. Of *things*, by access to and use of which this purpose is capable of being served, examples are as follow:

I. For *Active Occupation*.

1. Ground, and appropriate furniture, adapted to the purpose of the various exercises styled *gymnastic*.

2. Waters, in which,—without annoyance to persons of the female sex in respect of decency, —*swimming* may be practised.

3. *Covered places* in which, and *instruments* by which, the exercise of *fencing, broad-sword, quarter-staff, single-stick, wrestling*, and other pastimes partaking of, or approaching to, the nature of military exercises, may be practised.

4. Various places, where pastimes of which *balls*, of one sort or other, are the principal *instruments*, may be partaken of.

II. For *Sedentary Occupation*.

5. Appropriate libraries, with their contents.

Instructional.

Art. 43. IX. *Expense-minimizing principle.*—Included, in this case too, is the assumption—that, for the purpose of *security*, *external* and *internal*, and thence of adequate *appropriate aptitude* and *contentment*, sufficient provision is made: and that, by no additional expenditure that could be bestowed on the service of any one of the departments in question, could any equivalent addition be made to the serviceableness of the whole.

Instructional.

Art. 44. For reduction, and thence for the minimization of *expense* in its several shapes, meaning always the *balance* on the side of expense,—the nature of things presents two different, and in *form* opposite, though in *effect* accordant modes: 1. *Direct*, to wit, by defalcation of what is needless; as to which, so far as regards the *personal* stock, see Section 10, *Remuneration*: 2. *Indirect*, to wit, by return in the shape of *profit* from the aggregate stock; as to which, see Section 18, *Collateral employment*.

Instructional.

Art. 45. X. *Preponderant detriment-excluding principle.*

This desirable property thus brought to view, with the correspondent principle, applies to the whole system taken together: and consequently to each of the several arrangements, made under the guidance of the above-mentioned principles. To be borne constantly in mind, and serve occasionally as a memento, is the use of this principle; and consequently the *purpose* for which the mention thus made of it is here made. Seldom will any special arrangement be anywhere suggested by it: seldom anything more than the cautions which are thus given,—in the first place, not to give existence to any arrangement, without the conception of a quantity of the matter of good in this or that *specific* shape, presenting itself as about to be produced by the arrangement;—in the next place, not to make any arrangement for the attainment of such good, without sufficient assurance that, by such arrangement, along with such good, evil preponderant over it in *all elements of value taken together*, propinquity and certainty not forgotten, will not be produced.

Instructional. Ratiocinative.

Art. 46. Uses of the exhibition thus made of these principles:

1. Assisting the *conception* and *memory* of the directing functionaries, employed in the business of this compound subdepartment; to wit, by keeping constantly under their eyes a representation, as clear, comprehensive, and correct as may be, of the subject-matters calling for their attention.

2. Assisting their *judgment*, by keeping at the same time under their eyes, the conflicting demands made upon them by the mutually-antagonizing principles on both sides: in such sort, that to each a due, and no more than a due, regard may be paid.

3. Assisting their *invention*, by putting it to them to consider, whether these are *all* the *items* that belong to the account: and if not, to add such as are wanting; allotting to them, for that purpose, their appropriate *denominations*, with any such explanations as the nature of the case may have suggested.

SECTION III.

Radicals, who.

Expositive.

ART. 1. Exceptions excepted, to the Radical branch of the Defensive Force will belong, at all times, all who, being apt with respect to the performance of the appropriate exercise, are willing to join therein; none who are not willing. Appropriate denomination, accordingly, *volunteers.*

Instructional.

ART. 2. To all such as, being, as above, apt, are at the same time willing, the government will be disposed to afford the necessary instruments of *instruction;* persons and things included.

Instructional. Expositive.

ART. 3. The appropriate *personal* instruments of instruction will be persons of the same class as those by whom the corresponding instruction is afforded in the stipendiary branch of the Defensive Force: say, for example, for the appropriate manipulations and evolutions upon the smallest scale, drill sergeants: for the appropriate evolutions upon the larger scale, superior officers: with or without appropriate habiliments, as per Section 5, Art. 11, No. 10.

Instructional. Expositive.

ART. 4. The appropriate *material* instruments of instruction will be the least expensive of those which will suffice for the exercises: for articles no otherwise employed than by being instantaneously consumed—powder and ball, for example—no absolute need will, for this species of service, have place.

Exemplificational.

ART. 5. Examples are—

1. Musquets, which, having been employed or destined to be employed in the stipendiary service, have been ascertained to be unserviceable, and accordingly condemned and eliminated.

2. Instruments, which,—though incapable of being employed in firing, have at a minimum of expense been rendered, in a degree sufficient for this purpose, conformable, in respect of materials, weight, composition, form and size, to those employed in firing in actual service.

Principle, the *expense minimizing.*

Instructional.

ART. 6. To the Legislature it will belong to consider whether, in addition to infantry service, instruments of instruction, as above, shall, at Government expense, be afforded for volunteers in other more expensive branches of exercise; for example, in cavalry, common artillery, and horse-artillery service.

Principle, the *expense-minimizing.*

Instructional. Ratiocinative.

ART. 7. As to pay, or remuneration in any other expensive shape, no immediately effective service being called for or needed, no such expensive instruments will, it is supposed, need to be, nor therefore, at Government expense ought to be, employed.

Principle, the *expense-minimizing.*

Instructional. Ratiocinative.

ART. 8. As to the number of the individuals, in whose instance, for the operations in question, *spontaneous* inclination, by whatsoever motives produced, has place,—the number, it is supposed, will, for the sort of preliminary and contingently useful service in question, be sufficient: in the event of its being so, neither reward nor punishment could, for the purpose of giving determination to will, be employed without preponderant inconvenience, in the shape of uncompensated expense.

Principle, the *expense-minimizing.*

Instructional.

ART. 9. Exceptions excepted, to the instrumentary means above afforded at the public expense, the volunteers in question will, in each district, subdistrict, and bis-subdistrict, be at liberty to make, by voluntary subscriptions, such additions as they feel inclined to make.

Principle, the *aptitude-maximizing.*

Instructional. Ratiocinative.

ART. 10. Exception is—where, by a disposition made of the funds so formed, a probable effect might be, the giving an undue ascendancy to the more opulent over the less opulent classes, or to the population of one part of the territory of the state over that of another. Example—

1. One part, exercised by firing at marks either with rifles or firelocks; while, in the case of others, firing makes no part of the exercise.

2. One part, performing cavalry as well as infantry exercise; while, in the case of others, the infantry is the only exercise.

3. One part, employing in their exercise horse artillery, cannon or mortars: while, in the case of others, no such additional and pre-eminently expensive instruments of warfare, are employed.

Principle, the *inequality-minimizing.*

Instructional. Ratiocinative.

ART. 11. The Legislature will not, it is supposed, look for Radicals in the character of volunteers elsewhere than in towns of considerable size, and in the near neighbourhood of such towns.

Reason 1. Avoidance of the expense, in labour and money, of journeys to and from the place of exercise.

Principle, the *expense-minimizing.*

Reason 2. Avoidance of the exclusion put

upon those who are unable to afford the expense: the advantage thus given to the relatively opulent, at the charge of the relatively indigent.

Principle, the *inequality-minimizing.*

Expositive.

Art. 12. On this occasion, as on that of the demarcation of the territories of immediate judicatories,—by *near neighbourhood* understand a distance, not exceeding that which, by a person not incapacitated by special infirmity of mind or body, may be traversed to and fro on the same day, without need of sleeping away from home, leaving moreover an interval of time sufficient for the performance of the business in question, at the seat of business.

Ratiocinative.

Art. 13. Why, on this occasion, and for this purpose, cannot compulsion be advantageously employed?

Answer. Reasons.

1. For procuring for this service men in sufficient number,—compulsion (it is presumed) would not be needed.

2. Repugnant would the employment of compulsion be to the several principles following: that is to say: I. Aptitude-maximizing.—II. Number-minimizing.—III. Contentment-maximizing.—IV. Inequality-minimizing.—V. Expense-minimizing.

Ratiocinative.

Art. 14. I. *Aptitude-maximizing.* In this case, as in every other, the greater a man's relish for the service, be it what it may, the greater, in so far as depends upon relish, will be the probability of his appropriate aptitude in relation to it,—the less, the less: his appropriate aptitude, that is to say, in every one of its branches—moral, cognitional, judicial, and active.

Thus far as to the aptitude of the several *individuals*, individually considered. Now as to aptitude on the part of the *whole* taken together. By the supposition, on the part of *this* branch, appropriate aptitude will not be upon a par with what it is in the case of the *stipendiary* branch: if it were, no adequate reason would there be why *future and contingent* should be purposely substituted to *present* serviceableness and actual service; that is to say, no adequate reason for affording facility, as above, to the keeping on foot of the Radical branch of the national force.

Ratiocinative.

Art. 15. II. *Number-minimizing.* To the number of the individuals of whom the aggregate of the defensive force would be composed, so far as compulsion were applied, here would be an addition made without any proportionable addition to the efficiency of that same force. Of this addition, the amount would be, the exact number of the individuals of whom the addition in question would be composed; and of these not one would be about to enter, or fit to enter, into the stipendiary branch; not one, in a word, fit for actual service.

Ratiocinative.

Art. 16. III. *Contentment-maximizing.* By compulsion, to the whole extent of its application, maximized would be—not contentment, but discontentment. On the part, of the whole difference between the number raised and kept on foot by compulsion, and the number that could be raised and kept on foot without it, —discontentment to a greater or less amount, would of course have place. So many as are the individuals thus engaged, so many individuals whose endeavours, instead of joining in the service, would be employed either in avoiding the being attached to it,—or, if attached, in deserting from it. For the consequence of such a state of things in respect of efficiency and expense, see below—Arts. 18, 19, 20.

Ratiocinative.

Art. 17. IV. *Inequality-minimizing.* Here, again, instead of *minimization*, comes *maximization.* A state of enjoyment, the state of *a few:* a state of sufferance and oppressedness, the state of *the many.* In this case, actual service is supposed. Payment for *exemption* constitutes another and a very different case. In the case of payment for exemption, the inequality is not altogether unsusceptible of measurement: completely unsusceptible it is in the case of actual forced service.

Ratiocinative.

Art. 18. V. *Expense-minimizing.* Here, either the number will be incomplete, and to the correspondent degree the design frustrated; or deserters, originally or subsequentially such, will be to be pursued and endeavoured to be caught. But, to the expense requisite for this purpose, no assignable bounds can be found. For each deserter, pursuers more than one will be to be employed: of the whole number pursued, only a portion will be caught: in so far as the endeavour to catch them is successful, then comes the expense of prosecution; and of the number of those prosecuted, only a portion will, in all probability, be convicted; and of that portion again, only a portion punished, and forcibly aggregated to the corps. Then again, on the part of those thus aggregated will naturally remain the most anxious desire and endeavour to desert anew: and so, *toties quoties.*

But, while a part more or less considerable, are being thus dealt with, the whole must, and at the expense of the public, be maintained. To serve in this, or any other capacity, every man who, from property of his own, or other sources, has not wherewithal to keep himself alive, must be kept alive at the expense of the public, or he dies. But, in the distribution of

the matter of pay, to find out who can, and who cannot live without it, is not in this case practicable. Pay, if given to *any*, must then be given to *all*. To the expense of hunting and catching a part more or less considerable, is thus added the expense of keeping the whole; and, for the only *actual* service which is looked for at their hands, not one of them as yet so fit, or so much as expected to be so fit, as those actually belonging to the stipendiary branch, to which they are designedly kept from being aggregated.

Instructional. Ratiocinative.

ART. 19. Thus it is, that on willingness depend aptitude, contentment, equality, frugality—everything desirable. But willingness—on what does it depend? *Answer:* upon *time* and *distance*.

First, as to *time*. In vain would it be looked for, on the part of a man who, not having for his day's subsistence anything but his day's labour, is called upon to give it,—and without equivalent,—to poor and rich together. The day on which no man labours,—on which no man does anything for his subsistence,—this, if any, must then be the day, and the *only* day, on which a man who has no quantity of the means of subsistence in advance, can reasonably be expected to be found willing to take part in this, or any other kind of pastime. By this consideration, the possibility of obtaining men for this service without preponderant detriment, is confined to the day of general repose. Thus much as to *time*.

Instructional. Ratiocinative.

ART. 20. Now, as to *distance*. In vain would willingness be looked for, on the part of a day-labourer who, to bear his part in this pastime for a small part of a day,—even though it be, as above, the day of general repose,—would have to give up the whole remainder of that same day, with part of another, and the whole of the intervening night.

Thus it is, that the possibility of obtaining men for this service,—without preponderant detriment, as above,—seems confined to the site and near vicinity of towns of considerable magnitude.

Nor, to either party, need this limitation be, all things considered, a subject of regret. In town, as contrasted with the country,—in the seat of the densest, not in that of the thinnest population,—has the nature of man, in unison with the nature of things, placed the seat of the most intellectual public. What the town pays in labour, it thus gains in influence. What the country parts with in influence, it saves in labour; and it has been seen how vast the saving is.

Nor, by this division, is the population separated into castes, with permanently conflicting interests: town remaining always open to emigrants from country; country to emigrants from town.

Instructional. Exemplificational.

ART. 21. To an English or English-bred mind, the idea of an aggregate body, the individuals of which are brought together by compulsion, with a view to land-army service,—and which is distinguished from an army by its comparative unserviceableness for the purposes for which both are intended,—presents the word *militia*. As to the *existence* of this institution, in England, and in the Anglo-American United States, it is unquestionable. To find for it anything like *a use*, must be the work of imagination. Two, and no more than two, uses, does this instrument (it is believed) ever bring to mind.

1. Supposable Use the first. *Nursery for the army:* this phrase may serve to give expression to one.—2. Supposable Use the second. *Protection against* the army, and those who have the command of it: this phrase may serve for the other.

As to the benefit derivable from the keeping up, at *all* times,—by pay, and compulsion to boot, a large body of ineffective men, with no better prospect than that of a *chance* of being able, *with*, or though it were even *without*, compulsion, at one time or other, to aggregate a small portion of it to the effective army, instead of aggregating to that body, on each occasion, at the minimum of expense, the number actually wanted and no more,—this first imaginable use has just been held up to view.

Instructional.

ART. 22. Under the head of *contentment-maximizing*, the affliction attached to compulsory service, in this line, has been brought to view. To save from all such affliction themselves and their associates, it has, of course, been the effectual care of rulers to grant exemption from it to purchasers. Price for a temporary exemption, say (for example) as under English militia law, £10; of the persons on whom the obligation is imposed, some there will be, who, having for their all this same £10, purchase the exemption, pay for it such their all, and suffer accordingly: others who, if they had had the money, would gladly have paid it for the exemption; but not having the money, serve per force, and suffer accordingly still more than those from whom their all has, as above, been taken. Thus stands the matter at the *bottom* of the scale of opulence. Look now to the *top*.

Others there are, each of whom, having a million of pounds at command, pay the 100,000th part of their property, and suffer nothing. Between these two extremes rise, in the scale of inequality, as many degrees as there are *farthings* between the ten pounds and the million of pounds. Nor is this highest degree of inequality regarded as sufficient. For, at the top of the scale, persons there will be sure to be, and in considerable numbers, of whom such effectual care will have been taken, that they

will have the benefit of the exception without paying so much as one farthing for it. Such, under matchless constitution, is the regard paid, on this occasion, to the *inequality-minimizing* principle.*

Instructional.

Art. 23. Remains, the protection imagined to be afforded or affordable by the militia *against* the army: against the army, and thence against those who have the command of this last-mentioned instrument, the force and formidableness of which are not open to dispute.

Here, if the use itself is *imaginary*—not so is the fact of its having been held up to view, and *that* by the highest authority, in the character of a real one. Witness the English statute, 26th Geo. III. cap. 107, passed for *consolidating* antecedent statutes, by which the institution styled *the militia* had been legislated upon. True it is, nothing can exceed the delicacy with which the conception here in question is sought to be conveyed. But what is meant, is either the above, or nothing. "A respectable military force, under the command of officers possessing landed property within Great Britain, is essential (says the act) to the constitution of the realm." "The militia, now by law established, has (it continues) been found capable of fulfilling the purposes of its institution." Such are the propositions, by which, in the guise of *reasons*, the approbation of the *subject many* is bespoken for the institution:—bespoken by the united wisdom and eloquence of the *ruling one* and the *sub-ruling few*.

Instructional.

Art. 24. Thus much for *profession*. Now for *efficiency* and *sincerity*. This shadowy instrument of security, against the irresistible instrument of danger and the hand that wields it—by what hand, if applied, is it to be applied? By that same hand, and no other. Approving this policy, would you pursue it with consistency?—one course, and one course alone, lies open to you. An invasion? is that what you are afraid of? To the apprehended invader give the command of whatsoever army you have for your defence. Buonaparte, when at Boulogne, was the man to have commanded your army: Buonaparte,—not the King, the Prince Regent, or the Duke of York.

Instructional.

Art. 25. The engine, with its *primum mobile*, being in such hands, the machinery—can it be worth looking at? Look, then, at the intermediate wheels. Persons holding command in this body—to whom does it belong to locate them? To the monarch; every one. To whom to dislocate them, and that at pleasure? To the same. On whom at all times does it depend whether motion shall be given to them? To the same. Oh, but the officers must, each of them, have a piece of land belonging to him. True; but such a piece, that, putting all the pieces together, the aggregate will still fall short of what is possessed by this or that individual, whom the vision of a *star* in the East will lead at all times whithersoever his Majesty pleases. Remain all this while the *privates;* and if, as above proposed, it was on their own free-will that their convention and their operations depended, then indeed the security might amount to something. But no: matchless constitution knows better things.

Instructional.

Art. 26. Well, then—this same machinery—is it altogther useless? By no means. To whom, then, is it of use? To the engineers—the civil engineers,—King, Lords, and Commons, that have charge of it. And its value to them, what is it? Answer—Year ending 24th December 1826, £287,407, 11s. 5d. Note, however, that what this year gives is the minimum of its value. This year the militia was not, as the phrase is, *called out:* if called out, the value of it, as above, would, to an indefinite amount, have received increase.

Instructional.

Art. 27. So much for England. Turn now to the Anglo-American United States.

When the democracy there does wrong, it is by thoughtless continuation of the usages of the corrupt monarchy out of which it sprung. Witness *Senate*, as to which, see below, Ch. xxix. Witness *Common Law*.

Militiamen.—On paper say 1,300,000;† number in attendance everywhere variable, at all times unascertainable. For estimating effects, two portions of the aggregate must be distinguished; those whom free-will, and those whom compulsion brings together; to the last alone applies what follows.‡

* When the French had their *corvées*, the English had their *statute day's labour*. To add to the opulence of the opulent, every labourer, whose sole source of his day's subsistence was his day's labour, was ordained to starve while labouring on the road, six days out of every 365; for 365, say rather (to make allowance for holidays and sick days, as well as Sundays) 300.

This by Act of Parliament. To legislators, the misery they were organizing—was it unknown? Think, then, of their *intellectual* aptitude. Was it known? Think, then, of their *moral* aptitude.

Towards the close of the last century, (the exact year is scarce worth searching for,) on the motion of a friend of the Author of these pages, *Sir Thomas Charles Bunbury*, better known by the name of *Sir Charles Bunbury*, this disgrace to the Statute Book was expunged from it.

† Per estimate for year 1826 (being on the 2d of February 1828, the last estimate) 1,129,277. This information, and what follows it, are from a diplomatic source.—"From some of the States the returns were at that time two or three years old, and in other respects defective."

‡ Note, that in so far as it is by compulsion that

Instructional.

ART. 28. Danger being equal to 0, query the value of the best security? Of danger from without, sole possible source, hostility from the small, still unevaporated, remnant of the savage race. Miles of frontier between 2000 and 3000. For lining it, number of stipendiaries authorized by law, 6186, officers included; in actual existence, the whole number, never; on the 31st of October, 1827, 5722; a little more than two to a mile. In existence, why so few? Answer—because, judging from experience, more are thought not to be needed.

Instructional.

ART. 29. So much for security against danger from *without*. Now, as to security against danger from *within;* against danger from the above-mentioned 6186 stipendiaries. Of the men who, in the character of *riflemen*, have, from boyhood, been at least as much practised in the effective use of firelocks as any of the above-mentioned 6186 stipendiaries, what shall conjecture state as the number? Fifty times as many? Twenty times as many? Ten times as many? Strange, if for bringing the danger down to 0, the least of these numbers be not amply sufficient; reckoning as amounting to nothing, in respect of appropriate force, the number of the fencible men not thus practised.

Instructional.

ART. 30. So much for *security* in all shapes. Now, as to *expense*, expense of the price paid for it. Under this head, a little more accuracy would be worth obtaining, were obtainment possible. Meantime, note, that, under this head, compulsoriness or non-compulsoriness makes no difference; the pecuniary loss by the non-performance of productive labour being in both cases the same. But if, and in so far as, in addition to this loss, money or money's worth on the score of pay or equipment is expended,—thereupon comes a correspondent *addition* to this same loss.

In the United States, average value of a day's labour, a dollar; say, on a low calculation, half a dollar, in English sterling 2s., taking the dollar, for even money, at no more than 4s. Number, of each militiaman's attendance—days in the year, four. This gives for the yearly expense of his attendance, dollars, two; English sterling, 8s. This multiplied by the above-mentioned 1,300,000, gives dollars 2,600,000—pounds sterling 520,000. Compare this with the total expense of the general Government; in dollars not more than seven millions; in pounds sterling, 1,575,000.

the four days' attendance has been produced, it is by the local governments that this compulsion has been applied. "Congress are authorized to make laws for the organizing, arming, and disciplining of the militia, but have never exercised this power to any important extent."

Instructional.

ART. 31. Such is the expense, the burden of which is designed and endeavoured to be imposed. True it is that, to a large, and that an unascertainable amount, the attendance is not paid; and, in so far, the design is frustrated. True it is that, to that same amount, a deduction will require to be made from the expense.

Instructional.

ART. 32. But, proportioned to this *deduction* from the *expense*, comes an *addition* to the *mischief;* and *that* to an amount by which all attempts to bring arithmetic to bear on it are set at defiance. This consists in the debility infused into the whole legal system. Compulsory law covering the whole territory with its whole population, and disobedience to it staring everybody in the face everywhere. Everywhere either the actual suffering from the compulsory obedience, or the contingent and inappreciable mischief of debility in the Government from the disobedience.

Instructional.

ART. 33. As a substitute for the compound composed of indirect waste and the compulsion—pay, to be employed simply, has been proposed—pay to be given to a smaller number for longer and closer appropriate attendance and preparatory service. That in this way the evil in all shapes might be lessened, seems beyond dispute. But, for a security where there is no danger—for a security the value of which is equal to 0, 0 would be a somewhat more appropriate payment than hundreds of thousands of pounds or dollars, were there ever so few of them.

Instructional.

ART. 34. But an invading army—Oh, yes; a curious enough sight would be an invading army. But from whence, henceforward is it to come? From no whither, unless it be in a fleet of steam-boats sent out from Washington to fetch it. Yes; the very last invasion from Europe that the confederacy will ever have experienced, is the one which was disposed of by that General, in whom, because the rifles under him performed so well, the unreflecting multitude behold their fittest President.

Instructional.

ART. 35. From England shall an armament come for this purpose? If expense be mischief—more mischief will it have done *in* England—*to* England—before starting,—than it could reasonably expect to do in the United States, before the country had closed round it, and disposed of it, as *Burgoyne* and *Cornwallis* were disposed of. If to the people of England the Colonies called *their* Colonies were worth anything, who does not see that every one of their compulsorily-governed American Colo-

nies would be in the hands of the *freely-governed United States*, a security for good behaviour on the part of the distant obedience-compelling-rulers?*

Instructional.

Art. 36. To qualify the great body of the members of the radical force for attaining the ends of the institution, two sets of directing functionaries will be necessary: *commanders* and appropriate *instructors*. The instructors being but assistants to the commanders, will naturally act as such under their direction, as in private life, instructors in the several branches of art and science act under the direction of parents and guardians, their employers. Principle, the aptitude-maximizing.

Instructional. Ratiocinative.

Art. 37. In the case of the privates, service in this line being purely voluntary, the natural course of things is that, in them, that is to say in the majority of them, should be the choice of both commanders and instructors; for unless in this choice a vote were allowed to him, many a man whose service would have been useful, might decline to serve. Principles, 1. The Aptitude-maximizing. 2. The Number-maximizing. 3. The Contentment-maximizing. 4. The Inequality-minimizing.

Instructional. Ratiocinative.

Art. 38. So, as to dislocation, the natural course is, that in the ordinary state of things, elsewhere than in the hands of the majority of the members, in quality of electors, as above, no power of dislocation should have place. Principles—1. The Aptitude-maximizing. 2. The Number-maximizing. 3. The Contentment-maximizing. 4. The Inequality-minimizing.

Instructional. Enactive.

Art. 39. In consequence of such ordinary non-dislocability on the part of the members of the Radical force, unless by a majority of themselves, should apprehension of insubordination as towards the government, on the part of one or more subdistricts or districts, at any time take place,—the power inherent in the legislature will afford the appropriate remedy, by the effective exercise of the dislocative function, in the case of these as in that of any other set of functionaries. Principle, the Preponderant-detriment-excluding.

Instructional. Ratiocinative.

Art. 40. As to pay,—though to the condition of citizens exercising this function, recompense in a pecuniary point of view would be unsuitable,—and that more particularly in the situation of officers, recompense in the shape of power and dignity being of the essence of their situation,—yet, so far as regards their professional instructors,—the course, which presents itself as the most natural one, is—that, for *them* remuneration in the shape of pecuniary pay should be allotted; and as to the *fund from whence*, that which presents itself as the most natural one is a *stock purse*, formed by contribution among the *pupils*. Principles—1. The Contentment-maximizing. 2. The Inequality-minimizing.

Instructional.

Art. 41. As to the class of persons, to whom in quality of *instructors* the choice will be directed, it will, of course, consist of those, who, instruction in this branch of art and science having been gained by them in the stipendiary corps, have ceased to belong to it: *these*, with or without *those* in whose instance, though they continue to belong to that same corps, quantity of time requisite to service in this shape can be spared.

Instructional.

Art. 42. To the legislature it will belong to consider—in what way facility for the obtainment of the instruction in question from those same sources, one or both of them,—may most conveniently, if at all, be afforded.

Section IV.

Stipendiaries, who.

Expositive.

Art. 1. A stipendiary is every person, who, having by authority of government, as per Art. 2, been *located* in any part of the aggregate corps composed of stipendiary defensive force functionaries, has not been, as per Art. 3, *dislocated* out of it.

Expositive.

Art. 2. Applied to military service, *location* is styled *enlistment*.

Expositive.

Art. 3. Applied to military service, dislocation is styled *discharge*.

Expositive.

Art. 4. Reference had to an already exist-

* In several of the United States, serving in the Militia serves as a qualification for voting on elections.

Considered in itself, this arrangement presents itself as eminently useful, as being powerfully contributory to the superseding all need and demand for compulsion, for the purpose of engaging men to the performance of this service. So far as regards the defensive force establishment, the usefulness of it seems, therefore, eminent and unquestionable.

But *qualification* on the part of one description of persons, supposes on the part of another description of persons, *disqualification*:—an arrangement which, in proportion to the extent given to it, is inconsistent with the *universality of suffrage*, proposed as per Ch. vi. Legislature, Section 5, *Electors, who.*

ing corps, to which the locatee is aggregated or designed to be aggregated, location in military service, or in a word *enlistment*, is styled *recruitment:* the locatee, a *recruit*. As to this, see section 14, *Recruitment*.

Expositive.

ART. 5. Reference had to an already existing corps, which it is proposed to disembody,—to wit, by a simultaneous discharge of all the individuals of which it is composed,—dislocation of those same individuals is styled *disbandment*. As to this, see Section 15, *Disbandment*.

Expositive.

ART. 6. The interval of time between the location of the individual and his dislocation, is styled his *term of service;* as to which, see Section 5, *Term of Service*.

Enactive. Expositive.

ART. 7. What follows in this section applies exclusively to the land branch of the defensive force service.

Instructional. Ratiocinative.

ART. 8. Essentially stipendiary is the service of the constantly and moveably serving functionaries, in this line of public service. For, of the comparatively small number of those members of the community, whose subsistence being permanently secured, is drawn from masses of property already brought into existence, and habitually kept up,—no numbers anywhere sufficient for this service, would voluntarily serve, or could or ought to be made to serve, constantly and gratuitously; in time of actual service, to such a degree is the occupation exposed to bodily hardship in the extreme, in all imaginable shapes, temporary and perpetual, (such hardships being moreover liable to terminate in the loss of the substance or use of bodily organs or limbs, or of life itself.) And, to those who have no such assured means of subsistence, such gratuitous service would be impossible.

Instructional. Expositive.

ART. 9. Classes. From the nature of the armature, or say species of weapons principally employed, springs the division of the aggregate military functionaries into lines, or say classes. For distinction's sake, classes deduced from this circumstance may be termed *armature classes*, or say *weapon-taking classes*.*

Instructional. Expositive. Exemplificational.

ART. 10. In the nature of the armature employed, diversification will, of course, from time to time, be liable to have place, according to the state of advancement at which the art and science of warfare has arrived.

Instructional. Expositive. Exemplificational.

ART. 11. Of the armature *classes* at present in use, examples are the following:

I. *Infantry.*

Serving by land on foot; armed with firearms and bayonets.—1. Infantry of the line; intended to act in close order, and for the most part in close combat (*αγχιμαχιτέω, cominus.*)—2. Light infantry, or say Riflemen; destined to act by their dispersed force, and for the most part at a distance (*eminus.*)

II. *Cavalry.*

I.—Serving on horseback.

1. Heavy Horse, or say in French *Cavalerie d'élite*. Frequently Cuirassiers.

2. Light Horse. Commonly Lancers.

3. Horse Artillery; including Rockets.† Horse artillery is virtually cavalry. All artillery used in the field, or to accompany troops in their movements, should be horse artillery. Any other is an impediment instead of aid.

II. Serving amphibiously on foot or horseback.

4. Dragoons. Often confounded with cavalry in general; but improperly. They should be able, when dismounted, to form a body of infantry for close attack. All great generals have known how to derive utility from a body of men on horseback, possessing the quality of fighting on foot. Obstacle; feudal and barbaric propensity to think service on foot less honourable.

5. Light Dragoons, or say Mounted Riflemen. Principally intended for the duty of outposts.

III. *Serving for defence or attack of fortified places.*

1. Military Engineers. 2. Artillery Men; including Rockets.† 3. Miners. 4. Sappers. 5. Military Artificers. 6. Pontooneers, (for making bridges by boats, and otherwise.)	All these ought to form but one corps, viz. the Foot Artillery.

* In the nomenclature of English constitutional topography, certain divisions of territory are termed *Wapentakes*—originally, *Weapontakes:* the fencible inhabitants of each such division having, by law or custom, been under the obligation of occasionally meeting together, *weapons* in hand.

In French, the sort of class here termed a *weapon class*, is designated by the term *arme:* rather awkwardly and ambiguously.

† A cannon, is a machine which can discharge a hundred and fifty rounds, say in an hour, or some other considerable time. An equal number of men (with horses, if motion from place to place is required) can conduct and manage a hundred and fifty rounds of rockets; with this further peculiarity, that the hundred and fifty rounds may, upon occasion, be all discharged at once, or in any inter-

IV. *Serving amphibiously, by land or sea.*
1. Marines.

Instructional. Expositive.

Art. 11. *Ranks* and *Grades.* The Members of the Stipendiary Army are distinguished into—1. Privates; 2. Officers: (understand here *Military* officers.)

Expositive.

Art. 12. Understand by *Privates*, those to whose situation, exceptions excepted, as per Art. 11, it belongs to be commanded only, and not to command: to be subject to, and not possessed of, the power of command: to pay, in manner prescribed by law, obedience to the commands issued to them by *officers*, without on their part issuing commands to one another, any more than to officers in the several grades.

Instructional. Ratiocinative.

Art. 13. Necessary to the attainment of the end in view,—in every line of service, but more eminently in this,—is mutual conformity of operation on the part of co-operators: necessary to adequate conformity of operation is, on one part, *obedience;* necessary, even to obedience itself, is on the other part, *command.* At the time of actual service, during a battle, for example, in no number of Privates will the need of command and obedience to the production of conformity in operation be diminished, much less done away, by the death, disablement, or casual absence of all superordinates, between whom and them the faculty of communication has place. In the Army Code, provision will accordingly have been made for the contingency thus indicated.

Instructional. Expositive.

Art. 14. *Ranks.* One, namely the lowest, is composed of privates: it can hardly be called a *grade.* The other ranks are so many *grades.*

Instructional. Expositive.

Art. 15. Officers are distinguished into—1. Ordinary; 2. Erudite, or say select.

Instructional. Expositive.

Art. 16. Ordinary officers, immediately superordinate to privates, are styled *corporals.*

Instructional. Expositive.

Art. 17. Ordinary officers, immediately superordinate to corporals, are styled *serjeants.*

Instructional. Expositive.

Art. 18. Immediately subordinate to the lowest grade of the Erudites, namely, that of *ensign*, is the highest grade of the Ordinaries. The ensign is sometimes styled *second lieutenant;* in the horse, *cornet.*

Instructional. Expositive.

Art. 19. Understand by *Erudite* the officers, who (by the *Qualification Judicatory*, as per *Ch.* ix. Ministers collectively, Section 16, *Locable, who*, Art. 17) having been aggregated to the *General Locable list*, have, on view of the result of the pecuniary competition, been located by the Army Minister, with the approval of the Prime Minister.

Instructional.

Art. 20. In this line, the number of grades, and the relation between grade and grade, will be maintained, or from time to time varied, by the legislature.

Instructional. Exemplificational.

Art. 21. Of these relations, as they have place at present, examples are as follows:—

Lowest in this line is the grade of *ensign*, or say *second lieutenant.* Exceptions excepted, in this grade is placed every Erudite officer, on his first location.

Instructional. Exemplificational.

Art. 22. In Monarchical States, in the present practice of nations civilized in the European manner,—superordinate to the grade of *ensign* (or say second lieutenant)—and one to another, in the order here following, the last-mentioned to the first-mentioned,—are the several grades designated by the several denominations following:—1. Ensign; 2. Lieutenant; 3. Captain; 4. Major; 5. Lieutenant-Colonel; 6. Colonel; 7. Brigadier-General; 8. Major-General; 9. Lieutenant-General; 10. General; 11. Field-Marshal.

Instructional. Exemplificational.

Art. 23. In the service of the Anglo-American United States, no higher grade has place than that of Major-General.

Instructional.

Art. 24. More or fewer of these grades the Legislature will from time to time keep on foot, as it sees good: never ceasing to remember, that the greater the number of the grades subordinate to it, the greater is the stock of power attached to each superordinate grade; and that by every addition made to power, addition is made to evil; addition, on the occasion of which, to the forming of a sufficient warrant for the making of it, preponderant good attached to it in an assignable shape is necessary.

Enactive. Expositive.

Art. 25. I. Privates. *Mode of location. Privates* are either voluntarily located, or obligatorily located.

Expositive.

Art. 26. Voluntarily located are those who,

mediate quantity. Hence, though the accuracy of the rocket be inferior, the utility of the other quality may frequently predominate.

by *contract* on their part voluntarily entered into, engage to serve.

Expositive. Instructional.

ART. 27. Obligatorily located, if any, are those, whom in a time of extreme peril, through inability to procure a sufficient number voluntarily serving, the Legislature shall have ordered to be thus located.

Enactive. Expositive.

ART. 28. Deduction made of those excepted by law, they will be located by *chance:* to wit, by a Lottery, styled the *Defensive Force Lottery.* For the mode of location and dislocation by lot, see *Ch.* ix. MINISTERS COLLECTIVELY, Section 17, *Located, how.*

Enactive. Instructional.

ART. 29. Of the contract by which a person engaged serves as a *private* stipendiary, the conditions will be expressed in a written instrument, printed and published for universal cognizance. As to this matter, see Section 5, *Term and Conditions of service.*

Enactive. Instructional.

ART. 30. Any person, who after such enlistment regards himself as injuriously dealt with by any superordinate, civil or military, in this subdepartment,—may apply for remedy, as per Section 8, *Oppression obviated:* and *Ch.* ix. Section 21, *Oppression obviated.*

Enactive.

ART. 31. II. OFFICERS. Mode of location. Exceptions excepted, after the lapse or expiration of the *preparation period,* (as per Ch. ix. MINISTERS COLLECTIVELY, Section 16, *Locable who,*) no person who has not place in the *General Locable list,* to which he cannot have been aggregated without passing through the course of examination undergone before the Examination Judicatory, will be locable in any grade of the Erudite class.

Enactive.

ART. 32. Exceptions will be,—1st, If, for special reason, in the location instrument expressed, the Prime Minister, upon his responsibility (as per Ch. viii. PRIME MINISTER, Section 2, *Functions,* Art. 11,) shall have seen good to locate any person in the first instance, without his having undergone probation in the qualification judicatory: taking him, for example, from the population of the state at large, or from some rank in the army of some other state, at peace or war with this state.

Instructional.

ART. 33. To the legislature it will belong to consider—2. Whether, from the *Qualification examination,* and for what reasons, after the *preparatory period* (as per Ch. ix. Section 16, *Locable who*) any and what armature-class or classes shall to this purpose be excepted.

Instructional.

ART. 34. So likewise, as to the *pecuniary competition* on the occasion of the *first,* or say *original* location, in the lowest of the Erudite grades. (As to any higher grade, see Section 10, *Remuneration.*)

Instructional. Ratiocinative.

ART. 35. To the legislature it will belong to consider whether, antecedently to actual location in the above-mentioned lowest grade of officers, it shall not be an indispensable condition, that the individual shall have been located for a determinate time—say a service year—in the situation of *Private.* Principles—1. Aptitude-maximizing. 2. Contentment-maximizing. 3. Inequality-minimizing.

Ratiocinative.

ART. 36. Reasons: 1. Maximization of appropriate aptitude cannot but be promoted by the individual's being himself habituated to the performance of those manipulations and evolutions, the performance of which on the part of others, it belongs to him to superintend.

2. Highly conducive at least, if not necessary, to adequate sympathy of *affection,* is correspondent sympathy of *conception;* and *that* in so far as prudentially practicable, by means of self-experience. Conducive, in an eminent degree, to the habit of giving kind treatment to others, is, in relation to them, sympathy of affection; and to sympathy of affection, sympathy of conception as above.

3. In no small degree,—even under the most effectual system of regulations which for exclusion of oppression can be devised,—will the comfort of those who are subject to military command, be dependent upon the degree of sympathy, which, in relation to them, has place, in the breasts of those by whom the command over them is exercised.

Instructional. Exemplificational.

ART. 37. In France, not only under the Revolution, but under the absolute monarchical government of Buonaparte, this preparatory location in the rank of private had place. As to term of service in that same lowest rank, the length of it appears not to have been fixed. Suppose it variable, several circumstances may be imagined, by any one of which, much more by all of them put together, the length which would otherwise have had place, would naturally be customarily reduced. Say, for example, ancestry, opulence, education, location on recommendation by this or that high-seated superordinate.

Instructional. Exemplificational.

ART. 38. Under the English system, in the ordinary course of practice, location of officers, from the lowest grade of the erudite class upwards, having for its ultimate cause, in each

instance, the act of the monarch, as evidenced by his signature, accompanied with appropriate counter-signature,—has for its intermediate cause, to a considerable extent, the payment of purchase-money to the use of an occupant of the grade in question, who, on receipt of the money, is by his own consent dislocated; in his room the purchaser being at the same time located. Qualification-proving examination, none. Diversified and tortuous in no small degree, would the course thus taken be, on inquiry, seen to be. For the efficient and final cause of these qualities, on this occasion as on others, recourse must be had to the aristocratico-monarchical form of the government. Main object, maximization of the quantity of the matter of prosperity and means of happiness, drawn, by the ruling one, and the subruling few, from the product of the labour of the labouring many; particular and subsequent objects (as per Ch. ix. Section 17, *Located, how*, Art. 44, &c.) on the occasion of this as of every other part of the official establishment, is maximization of expense, coupled with minimization of appropriate aptitude. As to the particular set of arrangements which in the present instance the pursuit of these objects has had for its result;—such is the diversification and perplexity which they exhibit, that the exposition of it would occupy a far greater quantity of space than can here be afforded. Suffice it to add—that in the maximization of the expense, care is taken that the most eligible lots shall be shared, in the largest proportion practicable, among the members of noble and other aristocratical families, for whose further accommodation the quantity of aptitude necessary to location (understand of aptitude in that shape in which it is the fruit of natural talent improved by labour) is minimized. As to this, see further Section 6, *Promotion*.

Instructional. Ratiocinative.

Art. 39. In any part of the above-mentioned arrangements is the saving of expense to Government among the objects? Plainly enough it may be seen, to how much greater an extent that object cannot but be attained by the union of the reductional with the emptional bidding (as per Ch. ix. Section 17, Art. 1 to 5) and the universality of its application to the lowest or *original* grade, beyond which it cannot be carried with preponderant advantage; as to which, see this Ch. Section 6, *Promotion*. Moreover,—to obviate the inaptitude producible by absolute deference to the joint result of the Qualification-competition and the pecuniary competition,—for this purpose, as in all the other subdepartments so in this, to an individually responsible functionary will the function of location be committed, to wit, to the minister of the subdepartment, after mention made of the cognizance taken by him of the respective results of these same competitions. And, once more, thus it is, that the union is endeavoured to be effected between maximization of appropriate aptitude, and minimization of expense.

Section V.

Term and Conditions of Service.

Expositive.

Art. 1. In the Stipendiary Branch of the Military Service, in the case of each individual, by his *term of service*, understand the length of time that has place between the day on which he is located, and the day on which he is dislocated.

Expositive.

Art. 2. In employing the phrase *term of service*, reference may be had—either, 1. To the whole of the Stipendiary Military Service; or, 2. To this or that particular *class*, or say, *sub-branch*, of it; that is to say, *land* service, *sea* service, *amphibious*—or say *marine* service: or to this or that *rank* or grade, in any one of these same sub-branches.

Expositive. Enactive.

Art. 3. In the several sub-branches of the Stipendiary Military Service, the business of *location* and *dislocation* is susceptible of diversifications, the same as those which have been brought to view, with reference to the members of the Administrative Department, taken in the aggregate, (as per Ch. ix. Ministers collectively, Section 18, *Dislocable how*,) but under *denominations* some of them peculiar to those two Defensive Force subdepartments.

In regard to *exit*, no such favour—no such inequality—did the nature of the service leave possible.

On the part of every officer, or of officers in any considerable number,—suppose the faculty of *exit* left altogether to *choice*,—perpetual danger of mischief, to a boundless amount, is the consequence. Even without *concert*, without *sinister design:* without *inducement* in any shape other than that of *personal comfort*,—an *Army*,—any army, or any part of it,—might, at any time, be *dissolved;* by concert, and to a correspondent extent, threat of eventual resignation,—*power*, to an indefinite amount, might at any time be exercised; exercised over the superordinate authorities, including the supreme authority in the state: *consequence*, in a word, at any time, on any occasion, the establishment of a *military, aristocratic*, or *monarchical* despotism.

Expositive.

Art. 4. *Enlistment—recruitment—discharge—disbandment:* in these words may be seen so many denominations, employed in giving designation to modes of location and dislocation, liable to be different in some sort from those which have place in non-military service. As to *location*, see above, Section 4, *Stipendiaries*,

who: and Section 14, *Recruitment:* as to *dislocation*, see Section 15, *Disbandment.*

Expositive.

Art. 5. Enlistment is location; voluntary or involuntary. In the case of the military sub-branches, of both those modes is the operation of location susceptible: of the voluntary mode alone, special exceptions excepted, the several non-military situations collectively in the several other departments and subdepartments as above.

Instructional.

Art. 6. In all branches of the Defensive Force service, *involuntary*, or say *compulsorily-enforced* enlistment may, to an unlimited amount, be but too indispensably necessary; as to which, see below, Arts. 36, 41: in any other department or subdepartment, only to an extent comparatively inconsiderable, can any such necessity have place. For these cases, see Ch. xii. Judiciary collectively, Section 12, *Judges' aid-compelling function:* Ch. xvi. Quasi-Jury, Section 4, *Located, how:* and Ch. xxv. Local Headmen, Section 12, *Justice-aiding function.*

Expositive.

Art. 7. By the word *recruitment*, reference is made to a corps already formed, in which a vacancy, or vacancies, in any number, have taken place: by it is meant the act of filling up such vacancy or vacancies.

Expositive.

Art. 8. *Discharge*, is *dislocation* applied to individuals individually operated upon.

Expositive.

Art. 9. *Disbandment*, is *dislocation* applied at once to the whole number of the individuals of which the corps in question is composed.

Expositive.

Art. 10. In the non-military lines of public service, only in the case of some change of system, can any such extensive mode of dislocation as that which is termed *disbandment* have place: and, in that case, the demand for the operation itself is to such a degree rare and casual, that no appropriate denomination for it has grown into use. To the land-branch of the defensive force is the frequent demand for it, and consequent use of it, confined. To an extent more or less considerable the operation is the natural, and always desirable result, of a change from a state of *war* to a state of *peace.*

Instructional.

Art. 11. In relation to the terms of Defensive Force service, subject-matters for the consideration of the Legislature will be the following:—regard being had to the different branches of the service, and the different weapons and other material instruments of warfare therein employed.

1. *Age: Earliest*, at which the enlistment of the individual shall have place.

2. *Freedom:* In what cases, if in any cases, the enlistment shall be compulsory.

3. *Age: Latest*, at which the individual shall continue on the list.

4. Reckoning from the day of enlistment, *length of the time* during which the individual shall stand *engaged* to serve: whether limited no otherwise than by the duration of his life and physical aptitude, or likewise by a *certain* number of *years.*

5. If by a certain number of years,—shall this his term of service, speaking in general language, be *long* or *short?*

6. The length of this term, shall it be subjected to any modification, in consideration of the *age* of the individual *at* the time of *enlistment?*

7. At its expiration, shall the term, in any and what circumstances, be *renewable*, at the will of the Government alone, or of the individual alone, or no otherwise than at the will of both conjointly: and, in the case of a fresh engagement, shall there be any and what variation in terms? and so in the case of each succeeding engagement.*

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* As to the length of the term, what follows is from an English officer, possessing, in a peculiar degree, the means of observation, accompanied with appropriate aptitude. For a first engagement in the infantry, in a country not employing its troops chiefly in distant dependencies, seven years a proper medium: in the cavalry, eight years, or at most nine: in the artillery, the same. Where there are distant dependencies, the terms may require to be increased.

In British India, for the natives, styled *Sepoys*, the customary terms of years vary from three years to seven years; the length of the term engaged for being, in this case, at the option of the individual enlisting. In this line of service there have been always candidates for admission, more than could be received.

In 1806, in English service,—at the recommendation of William Wyndham, then at the head of the land branch of the Defensive Force service, engagement for limited terms, for example *seven years*, was substituted, and to a considerable extent, to engagement for *life*. By this arrangement, the condition and character of this class of functionaries were, in a high and conspicuous degree, meliorated.

Since that time, the principle has been broken in upon, by admixture of life engagements with limited term engagements. For the unlimited terms, bounties were made greater than for the limited: and, to the short-term system, obstruction has been opposed in other shapes.

By the observant functionary above-mentioned, no more probable cause for this departure has been found, than the natural fondness for arbitrary power, in the breasts of the high professional functionaries, and sympathy for it in those of their civil exordinates and superordinates.

In respect of subsistence, engaged for in the

8. At the expiration of each such term of service, in the instance of each individual, in the case of any and what *distance* from his *home*, shall any and what provision be made for his conveyance thither? and, for this purpose, *what place* shall be considered as his home?

9. *Remuneration*—its *amount:* what, in the several branches, and grades in each branch, shall be the amount of it, in all shapes taken together.

10. *Remuneration*—its *shapes:* what part of it in the shape of the matter of *subsistence*,—food, drink, clothing, lodging, means of conveyance included: what part of it, and at what *times* delivered, in the shape of *money* or *money's worth*, over and above the matter of *subsistence*, as above.

11. *Remuneration:* after the expiration of the term of service original, and in case of renewal or renewals subsequential, shall any and what such additional remuneration be given, in consideration of *length of service*, or length of *life*, or *cessation* or diminution of physical capacity of service?

12. *Remuneration:* in case of *wounds* curable or incurable received, or sickness contracted, in battle,—and accompanied, or not, by cessation or diminution of physical capacity for service,—shall any, and what additional remuneration be given on the ground of *compensation*?

13. *Promotion*—on what contingencies shall it depend?

14. *Punishments*—to what, and in what events respectively, shall the individual be subjectable;—and, in each event, in what shapes, other than those to which a non-military man is equally subjectable.

Instructional. Ratiocinative.

Art. 12. Note, that whatsoever expenditure may be necessary on the score of subsistence, scarcely any part of it can, with safety, be left to be defrayed by the individual himself, out of that which is allotted to him in the shape of *money*. Reason—Because the fluctuation which in his situation may have place, in respect of the relative value of money, may be such that, from the insufficiency of the supply in respect of this or that article of subsistence, unexpected hardship, to an unlimited degree, even to that of loss of life, will be liable to ensue. The degree in which such enhancement is capable of having place, will be susceptible of indefinite augmentation, by the scarcity liable to be produced in time of *warfare*, by the circumstances of time and place.

Instructional. Ratiocinative.

Art. 13. Reasons in favour of a *long* term, these:—for a *long* term, that is to say, for the longest term consistent with the individual's continuance in a state of capacity for service, in respect of health and strength.

1. Generally speaking, with length of continuance in the service, will increase *practice;* and with practice, *aptitude*. Principle, the *aptitude-maximizing*.

2. Successive renewals may require correspondent bounties. Principle, the *expense-minimizing*.

Instructional. Ratiocinative.

Art. 14. Reasons *against* a *long* term, or say in *favour* of a *short* one, these.

1. In proportion as the individual is well treated, the service will, generally speaking, answer his expectation; and, supposing it to answer his expectation,—generally speaking, he will with satisfaction join in the renewal of the engagement. Principle, the *contentment-maximizing*.

2. In this case, the shorter the term, the stronger will be the motive, by which the government will be solicited to make provision for good treatment to this class of public functionaries: to make such provision, to wit, by appropriate enactments, followed by execution and effect uniformly given to them in practice. Principle, the *contentment-maximizing*.

3. As to expense. The better the treatment in other respects, the less will be the expense needed in the articles of subsistence and pecuniary pay. Principle, the *expense-minimizing*.

Instructional.

Art. 15. If a pension of retreat, fixed or dependent on pleasure, be included in the terms of the engagement, it may be made greater in case of a second engagement, still greater in case of a third, and so on.

Instructional.

Art. 16. In this case, the past length of life, at entrance into the original engagement, may present a demand for consideration, with a view to its being taken into the account.

Instructional.

Art. 17. In the case of enlistment for a limited number of years,—into the account of the *expense* may require to be taken, that of conveyance to the individual's *home*, as per Art. 11. No. 8. The sort of government which has distant dependencies is, however, the only one under which this article of expense will

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articles of food, clothing, and lodging, the hardships imposed upon the functionaries of some classes, were, at one time, enormous. In the year 1797, singularly extensive and alarming was the mutiny that took place in the *sea* service. It had for its cause the frauds committed on the sailors, by various functionaries, in whose instance, as in every instance under matchless Constitution, delinquency was either kept out of sight, or, if known, left unpunished. The mixture of depredation and oppression in this shape, was, however, in consequence of the alarm, put an end to. But, of the mutineers, some were hanged, others flogged to death. Punishment, if any, mis-applied; appositely-applied, none: such is the all-ruling axiom.

be found to possess any very considerable degree of importance; and with a constitution such as the one here proposed, the possession of distant dependencies will scarcely be found reconcileable.

Instructional. Ratiocinative.

ART. 18. Of an arrangement in relation to this subject, the importance would range upon a scale, varying in length from a few score miles to that of a semi-circumference of the globe. At the one end of the scale, place the soldier in a stipendiary army kept up for common defence by the *Helvetic* confederacy; and, at the expiration of his term, suppose him in the territory of any one of the confederated states: at the other end, in an army in the *English* service, and at the expiration of his service, suppose him stationed in Van Dieman's Land, or on some part of the northernmost boundary of British India. In this case, suppose the place of his first enlistment his own native place, and that place anywhere about the middle of England. The refusal or omission to reconvey him to such his native place, or at any rate to some place or other in England, might have the effect, if not of homicide, at any rate of perpetual banishment, aggravated by hardships to the magnitude of which no limits can be assigned.

Principles concerned—1. the *contentment-maximizing;* 2. the *inequality-minimizing.*

Instructional.

ART. 19. Note here, the effect of an arrangement of this sort, on the state of the army, taken in the *aggregate.* In so far as, in the instance of each functionary, the term of service is in duration limited,—and in proportion as the duration is short,—an eventual efflux, and correspondent influx, will have place. For this continual change, the legislature will of course have to make provision: and, in the register of the Army-minister, in the lists of the several functionaries belonging to the several corps, attached to each man's name will be a memorandum expressive of the day on which his engagement expires, together with the place to which, in the event of a non-renewal, it may be necessary he should be conveyed: and, from these individual memorandums, will be formed aggregate statements, exhibiting, in the case of each corps, the efflux which in the several successive years will thus be produced, and thence the influx that will be needed: a separate account being kept for the casual efflux produced by death, or by discharge, for debilitation or other causes.

Instructional.

ART. 20. By circumstances of a local and temporary nature,—the legislature, and under the legislature, the appropriate minister, will be guided, in aggregating together in the several remote situations, such functionaries, in whose instance the reconveyance requires to be effected; in such sort, as to minimize, at the same time, on the one part the danger of preponderant detriment to the service, on the other part the amount of the *expense.* Principles—1. the *preponderant-evil-alleviating:* 2. the *expense-minimizing.*

As to the benefit capable of being derived to the aggregate of the *population* from the efflux and influx, see Section 18, *Collateral employments.*

Instructional. Ratiocinative.

ART. 21. Determinateness of the rights and obligations—its importance. Whatsoever be, in other respects, the conditions of the engagement, an essential condition—a condition of the utmost importance to the interest of both parties—the public, and the individual—is, that the rights and the obligations, the benefits and burthens, certain and eventual, which respectively belong to them in virtue of it, be at all times as completely known as possible: all contingencies liable to result from it, included: to the end that, for all such contingencies, the most effectual provisions possible may, on both parts, be made; and thus the *evil of disappointment,* as effectually as possible, be averted. Principle, the *disappointment-prevention* principle: as to which, see more in the Penal Codes; of the *rationale* of which it constitutes to a large extent the foundation.

Instructional. Ratiocinative.

ART. 22. Only in proportion as they are antecedently and timely known, can the benefits, whatsoever they may be, meant to be conferred by the establishment of rights, be received:—the *burthens,* appointed to be eventually borne, in the shape of the *punishments* appointed, be avoided. And forget not, that every portion of punishment which cannot operate in the way of prevention, nor yet in the way of compensation to individuals wronged, is so much suffering expended in waste.

Instructional.

ART. 23. To the accomplishment of this object, an inseparable condition is, that the expression given to the terms of the engagement—that is to say, to the rights and the obligations—the benefits and the burthens—devolving upon each party, in consequence of it, as above—be committed to *permanent* signs:—to words in the *written* form: in a word, to a *Code:* and that, with reference to these same reciprocal rights and obligations, this same Code be an *all-comprehensive* one: and in this, as in all other cases, as *clear* and *correct,* and, so far as is consistent with clearness, as *concise* as possible. Name of it in the case of the Stipendiary Land Service branch, say, *The Soldier's Code.*

Instructional. Ratiocinative.

ART. 24. The more *explicit* the terms of the

enlistment paper, the better *assured* will be the condition of the enlistee, under the engagement expressed by it. And the better assured his condition,—the cheaper, and in every respect better the terms, on which it will be in the power of the Government to obtain, at all times, such supply of those functionaries as it stands in need of; and the better assured it will be of obtaining at their hands the renewal of the engagement, in the event of its seeing reason to prefer short terms of years to long ones or terms for life. Principles, 1. the *external security-maximizing;* 2. the *contentment-maximizing;* 3. the *inequality-minimizing;* 4. the *expense-minimizing.*

Instructional. Expositive.

Art. 25. To speak more particularly,—in this document should be expressed every *obligation*, actual or eventual, to which, in virtue of the engagement, the individual is subjected, and every *right*, actual or eventual, which, by virtue of it, he acquires or may acquire: also, every state of things, occurrence, or event, by which a termination is capable of being put to either. Principles, 1. the *internal-security-maximizing;* 2. the *contentment-maximizing;* 3. the *inequality-minimizing.*

Enactive. Instructional.

Art. 26. For this same purpose, at the time of enlistment, an operation indispensably necessary is the delivery of a copy of this same *Soldier's Code*, by the appropriate registrar, into the hands of the *enlistee;* together with the making entry of such delivery in the register.

Enactive. Instructional.

Art. 27. This copy being, for its more effectual preservation, provided with a portable case in which it will be kept,—the possessor will be at all times accountable for the existence and good condition of it: accountable for it, to wit in the same manner as for the habiliments, arms, and other moveables, allotted by Government to his use.

Instructional. Ratiocinative.

Art. 28. A man's not being able to read is no reason for his not being provided with this implement: for by no other means can he be at all times apprized either of his rights or his obligations,—either of the services he stands bound to render, or the punishments to which he stands exposed in the event of failure on his part in respect of the rendering them. Nor can this document be in any case a useless one. For, whether he himself be able to read or no, he will, at all times, be in the presence of those who are: if, in the case of a private, no comrade of his is,—able at any rate will be some officer, from whom he is habitually receiving orders.

Instructional.

Art. 29. As to certainty, and correspondent prevention of disappointment, true it is, that, in respect of the effects of the right created and conferred by any engagement of this sort,—absolute *certainty* is altogether incompatible with the very nature of the service. But by every source of unavoidable uncertainty, distinctly, explicitly, and faithfully brought to view, and thus pre-announced,—disappointment, and with it discontentment, will be prevented,—the condition of the functionary meliorated,—and the price which it will be necessary for the Government and the public to give for his services, saved from needless increase.

Instructional.

Art. 30. In every such Code, in the instance of every article having for its purport the establishment of an obligation on the part of government for the benefit of the individual,—better the engagement were not inserted, than when inserted, broken. Not less repugnant to the principles of the supposed constitution, in this than in every other branch of the public service,—are all *arbitrary* dealings—and in particular all *breaches of faith.*

Instructional.

Art. 31. True it is, that in this branch, great latitude of action on the part of the constituted authorities—much greater than in any other—may be necessitated by the nature of the service. But, for no such latitude, in no line of action, nor to any extent, can need have place for any degree of latitude, to which, in the instrument of engagement, expression cannot be given, in the tenor and wording of it.

Instructional.

Art. 32. To the nature or extent of the obligations to which during the continuance of the engagement it may be necessary that the functionary should be subjected, no determinate limitation does the nature of the service admit of. For, by that same nature, he cannot but be, at any time, and for any length of time, exposed to death, in every degree of probability, from the lowest to the highest: and, were it not for such contingent exposure, his service would be nothing worth. Never can fail to have place the eventual need of his exposing himself to more or less *probable* death, by marching up to the cannon's mouth: this, with certain death in the shape of punishment, in the event of his declining so to do.

Instructional.

Art. 33. On the other hand, from all obligations, other than what, as above, are essential to the nature of this particular branch of public service,—he will, in common with other functionaries belonging to the Administrative Department, find protection and security, in the principles exhibited in *Ch.* ix. Ministers collectively, Section 21, *Oppression obviated.* And moreover, in the present case, for the ap-

plication of those principles to practice in and by the Military Code,—to the Legislature it will belong to establish, in conformity to those principles, such particular *arrangements* as the nature of the case may appear to require. See accordingly below, Section 8, *Oppression obviated.*

Enactive. Ratiocinative.

ART. 34. As to freedom—only in case of necessity, and to the extent of that necessity, does this constitution admit of *compulsory* enlistment. Principles, 1. the *contentment-maximizing:* 2. the *inequality-minimizing.*

Instructional.

ART. 35. In so far as the enlistment is *voluntary*, no otherwise than by means of the matter of remuneration can it be effected, to any amount affording a promise of being adequate. See above, Section 4, *Stipendiaries, who.*

Instructional. Ratiocinative.

ART. 36. For *compulsory* enlistment, the necessity has place, in so far as for procuring, *in time*, the requisite number of the functionaries in question, the quantity of the matter of remuneration necessary cannot be obtained. Principles, 1. the *contentment-maximizing;* 2. the *inequality-minimizing.*

Instructional. Ratiocinative.

ART. 37. Hence it follows—that, so soon as the quantity of the matter of remuneration, necessary and sufficient for the purchase of consent, on the part of the number requisite, can be obtained, functionaries voluntarily serving should be substituted to all, who, if any, are compulsorily serving. Principles, 1. the *contentment-maximizing:* 2. the *inequality-minimizing.*

Instructional.

ART. 38. Provided always, that the extent given to the change be not so great, as to be productive of inefficiency, to a decided degree, in the whole of the defensive force or any portion of it, by the substitution of unexperienced to experienced individuals, or of less experienced to more experienced. Principles, 1. the *External security-maximizing;* 2. the *aptitude-maximizing;* 3. the *preponderant-evil-excluding.*

Instructional.

ART. 39. Forasmuch as, exceptions excepted, (as per Section 3, *Radicals, who,*) the Radical force comprehends in respect of *contingent* obligation, the whole of the male population of the community,—enlistment will, in that, be transference of the individual from the radical to the stipendiary branch of the military force of the state.

Instructional.

ART. 40. When the enlistment is compulsory, whether it shall be compulsory alone, or part compulsory, part voluntary,—will depend upon various circumstances in the condition of the state.

Instructional. Exemplificational.

ART. 41. Case I.—The state, a Representative Democracy *recently* constituted: its *finances* in a low state: *money* sufficient for procuring a military force in sufficient quantity, *not assured;* the *number needed* of the land-force stipendiaries, bearing a large ratio to the whole population of the state. In this case, the adoption of the compulsory system may be matter of necessity. In this case appear to be, as yet, in a great degree, the late Spanish Colonies.

Instructional.

ART. 42. Case II. The state, a Representative Democracy firmly established: its finances in a settled and flourishing state: the number needed of the land-force stipendiaries, bearing but a small ratio to the whole population of the state. In this case are the *Anglo-American* United States.

Instructional.

ART. 43. Two inseparably-connected questions: 1. supposing the engagement compulsory —at what age shall the correspondent liability commence? 2. at what age terminate?

Instructional.

ART. 44. In every case, by what means shall the *selection* be made? By *choice*, in respect of the *classes* out of which it shall be made? By *choice*, in respect of the *individuals* who, among those of the classes determined upon, shall be selected? or by *chance* in respect both of the classes and the individuals?

Instructional.

ART. 45. Prodigious are the difficulties, which the exclusion of compulsion will, in so far as it is found practicable, exclude. But as, in number altogether indeterminate, individual instances, individual places and times, may occur, in which this practicability will not have place, these difficulties may, all of them, come of necessity to be grappled with.

Instructional. Ratiocinative.

ART. 46. Under some governments, with or without exceptions in favour of privileged classes,—the natives of the male sex have by coercive law been aggregated to the Land stipendiary force, in the rank of *privates:* in some instances, from the age of *adolescence*, in others from the time of *birth:* and thereupon, in some instances, for and during more or less protracted, but commonly, at any rate, limited, terms. No application, however, have those cases to the present case: the Land Stipendiary branch being the branch in question, and in *those* cases the *number-maximizing* being the principle looked and acted upon; in the present case the

resulting, or capable of resulting, are the following:—

Evil I. In the breast of a functionary, over whom is located another, towards whom he had been in the habit of exercising command, scarcely can a sense of hardship fail to have place: and, consideration had of that self-partiality which is inherent in human nature, scarcely can the unpleasant sensation fail to have for its accompaniment an opinion pronouncing injustice to have had a share in the production of that same hardship. Principle, the *contentment-maximizing*.

Note, that in this case, by transference into another corps, the evil in this shape might in a considerable degree be diminished: and this in the greater degree, the less close and frequent the communication between the two corps.

Ratiocinative.

Art. 11. Evil II. Of an habitually improper use of so widely extensive a power, one effect might be—the establishment of a permanent inferiority, in the condition of those to whose *disadvantage* it came to be habitually exercised, as compared with the condition of those in whose *favour* it came to be exercised. Principle concerned, the *inequality-minimizing*.

Ratiocinative.

Art. 12. Evil III. Of a power of this sort in the hands of a Prime Minister, one consequence might be—on his part, by means of this class of functionaries, a plan for substituting to a Republic a despotic Monarchy, as in the case of *Buonaparte*.

Instructional.

Art. 13. Note, that in the case of Buonaparte,—of no such result could there have been any the least probability, had not the despot thus formed been an extensively successful military commander; and that in the case of a constitution such as the one here proposed, the number of stipendiaries being minimized, while that of their sure antagonists and watchmen, to wit, the voluntarily serving Radicals, is maximized,—plainly inadequate to any such purpose would be the number capable of being, on the occasion of any such design, employed as instruments.

Instructional.

Art. 14. Note also, that from the limitation of the time during which the prime-ministership is continued in the same hands, the probabilities of both evils—to wit, favouritism and despotism—receive correspondent limitation.

Instructional.

Art. 15. So far as regards the command in chief of a corps, appointed on this or that particular occasion, for this or that particular purpose, the following modes of proceeding present themselves as open to the choice of the Prime Minister, or of the highest commander on the spot.

1. Appointing to the command the senior of all the officers, not as yet employed. Principle, the *contentment-maximizing*.

2. Appointing to the command an officer who is the senior of all who are actually employed: his seniors in a number more or less considerable, remaining on this occasion unemployed,—in which case, though passed by, they are not, any of them, placed under the command of one over whom they had been in the habit or expectation of exercising command.

3. Openly placing the officer in question over the head of others, in number more or less considerable, as per Arts. 3, 4: they serving at the same time with and under him. Principle, the *aptitude-maximizing*.

4. Giving the appointment in *form* to the senior of the officers employed; but, by secret orders, requiring him to follow, on every occasion, the advice of a chosen officer, who for this purpose is required to be attendant on him at all times: seniors to this secret director serving in any number, in the same army, at the same time. Principles, 1. the *aptitude-maximizing*. 2. The *contentment-maximizing*. 3. The *expense-minimizing*.

Note in this case the antagonization between the two principles, the *aptitude-maximizing* and the *expense-minimizing*.

Instructional. Exemplificational.

Art. 16. In the English navy service, an occurrence not unfrequent has been—the appointment of an officer whose grade is not higher than that of *captain*, to the command of a squadron of considerable force, while other navy functionaries in great number, in the several superior grades comprised under the denomination of *admirals*, have remained unemployed. In the histories of the times, indication of occurrences of this sort may be seen, in the appellation of *commodore* given to the commanding officer in such cases.

Instructional. Exemplificational.

Art. 17. In that same branch, England affords an example of a practice not likely to be found carried to so great an extent, if at all, anywhere else. This is—for the purpose of accelerating the pace of promotion for the benefit of a particular individual, without infringement of the seniority system, and thence without producing in that part of the official establishment any discontent,—pushing up, before him, and for the purpose of coming at him, his seniors, whatsoever the number of them may be: individuals, to no one of whom, at so early a time, would promotion have been given otherwise. To give to one man, whose extra services, or perhaps whose services altogether, are not worth sixpence, from £100 a-year to £1000, ten times or twenty times the money is thus given to ten or twenty others,

on no one of whom, but for the sake of this one, so much as a sixpence would at that time have been bestowed. So far as regards expense, this comes of the union assumed to be inseparable between increase of power and increase of pay: as to which see Section 10, *Remuneration*.

Thus it is that while, with the help of the *half-pay-list*, in the *army* there are commissioned officers enough of themselves to constitute a considerable army without the help of private soldiers,—in the *navy* there are commissioned officers, a large portion of them admirals, enough to man a frigate, if not a ship of the line, without the help of *private sailors*. In the English army-service commissioned officers in more number than, in the Anglo-American United States army-service, army stipendiaries of all ranks added together, commissioned officers, non-commissioned officers, and privates.

As to the cause of this diarrhœa, it is no secret to any one to whom newspapers are familiar: aristocratical ascendancy, with the accompanying plundering, the leading object: aristocratical ascendancy, of matchless constitution the choicest fruit.*

Instructional.

Art. 18. Note, that in regard to permanent promotion, no course which the nature of the case admits of can be altogether exempt from danger of error. On the part of this or that individual, success may have been obtained—success any number of times reiterated, and on each occasion proved by abundant and uncontradicted evidence,—yet, notwithstanding, on the scale of appropriate aptitude considered in all its elements taken together, the attainments of that same individual may have continued much inferior to that of numerous others, to none of whom any such favour has been shown by fortune.

Instructional.

Art. 19. Still worse, however, will be the chance for general aptitude, if, instead of success proved as above, the choice be left to the arbitrary will of any individual or number of individuals secretly and thence arbitrarily exercised. Nothing can their opinion be worth, any further than as grounded on appropriate evidence. Never can evidence, exposed, as in this case it cannot fail to be, to the influence of sinister interest and interest-begotten prejudice in all manner of shapes, and at the same time unexposed to the check of counter-interrogation and counter-evidence, constitute a ground comparable in point of trust-worthiness to judicially-delivered evidence, delivered in public, and under the wing of that security which is afforded by those same all-powerful instruments.

Instructional.

Art. 20. One consequence is—that, in default of special meritorious service judicially proved, or other more probative and at the same time observable evidence, if any such there be,—the command of an army may, by seniority, be made to devolve upon an individual, in whose instance deficiency, to any degree, in appropriate aptitude is, not only in fact, but even according to general opinion, but too well established.

In a monarchy, but for the expedients mentioned in Art. 15, the practice, which is so natural, of giving the most important commands to persons the most nearly connected with the monarch by the tie of natural relationship, would suffice to render the chance of success against a representative democracy, or a self-created monarch, in too great a degree inferior to be endured. Two obvious causes concur in the production of this dangerous practice: the additional security regarded as thereby given to the power of the family, and the gratification afforded to it by the possession of an item so valuable in the account of the objects of general desire, (to wit,) wealth, power, and factitious dignity. At the same time, in this case as in others, the higher the elevation of the individual in the rank of prosperity (prosperity being the aggregate of which these objects are the elements) the less is, of course, the degree of appropriate aptitude: the less being the quantity of them of which he is not already in possession, without need of that exertion (labour, self-denial, and self-inflicted pain included) without which no such aptitude is, in any adequate degree, attainable.

As to the expedient of secret pupilage, how frequent soever may be the mention of it in books of anecdote, and even in general histories,—it is not of the number of those, in the case of which the publicity of authoritative, and thence conclusive evidence, were naturally to be expected.†

* See to this purpose the comparison made of the state of the two defensive forces, French and English, by the French minister, Hyde de Neuville. Refer to the newspapers of the last week in July, 1828.

† An individual instance, in which,—even in a republic, under the exigency of the times,—this policy was resorted to, fell once under the notice of the author of these pages. In the war which ended in the existence of the Anglo-American United States, General Puttenham, high in grade and popularity, but weak in appropriate aptitude, was, in this way, put by Washington under the guardianship of Colonel Aaron Burr. Such, at least, was the statement made by that once high-seated and extraordinary aspirant after monarchy, in the year 1807 or thereabouts, in the course of a sojournment of some months under the same roof under which this is written. Burr had, for a year or two, been about the person of Washington, in quality of *aide-de-camp*, or secretary.

Of the disastrous state of the army in the Netherlands, under the command of the late Duke of York,

Instructional.

Art. 21. As to security for appropriate aptitude,—to the legislature it will belong to consider and determine, whether in any, and if in any, in what armature class or classes, antecedently to promotion into any and what superior grades,—in addition to the examinations in consequence of which the functionary had been placed in the locable list (as per Ch. ix. Ministers collectively, Section 16, *Locable who*,) fresh examination shall be undergone. Armature classes in which, if in any, the demand for such re-examination is most obvious, are the *scientific:* that is to say, the engineers, and the artillery classes.

Instructional.

Art. 22. Also, in case any such re-examination has place, what shall be the person or persons subjected to it: that is to say, whether that one alone who stands next in seniority to him by whose exit the vacancy is made, or all such other functionaries as stand in the same grade, as indicated by the same name: whether, for example, on the happening of a vacancy in the grade of first-lieutenant, the process shall be undergone by the senior second-lieutenant alone, or by all lieutenants in that same battalion, or by all lieutenants in any, and what number of battalions taken together.

Instructional.

Art. 23. Supposing any such re-examination to have place,—a further subject-matter of consideration will be—whether an officer who has been passed by in consequence of the result of one re-examination, shall, on the happening of another vacancy, be admitted to a second re-examination, for the purpose, and eventually with the effect, not merely of filling that vacancy, but moreover of recovering his former relative rank, in such sort as to take precedence over one or more of his comrades, by whom, in consequence of the first re-examination, precedence over him had been received.

Ratiocinative.

Art. 24. Why, to the scientific weapon classes, if to any,—in preference, or to the exclusion of the others,—should application be made of the re-examination system, as above?

Answer. Reasons.

1. In their case, preferably if not exclusively, has place the faculty of affording indication of adequate aptitude or deficiency, by the process of which *examination* principally consists: that is to say, affording answers in compliance with questions.

Instructional. Ratiocinative.

Art. 25. After the *first* location, that is to say, on the occasion of *promotion*, the pecuniary competition will not, it is supposed, be employed. Reasons:

1. To the purpose of reduction of expense, it will not be necessary. Under the *seniority system*, the increase of remuneration, at the accession of each successive superior grade as often as it will occur, is foreseen, and will naturally produce its suitable and duly proportional effect. At what time each promotion may be expected, will be matter of calculation, grounded on a course of experience open to all eyes. Principle, the *expense-minimizing*.

2. On the other hand, suppose this sort of competition renewed on each occasion; or though it were but on a single occasion;—neither inconsiderable nor unobvious are the evil effects: and those in a great measure unavoidable.

3. By dint of opulence, a youth with little or no experience, and thence with the *minimum* of appropriate aptitude, might take the command from seniors, in whose instance aptitude had by experience been, by any number of degrees, raised above *his*. Principle concerned, the *aptitude-maximizing*.

4. By seniors, their juniors in unlimited numbers, over whom they had for any length of time been in the habit of exercising command, might be seen put over their heads, and to their mortification exercising command over them. Principle concerned, the *contentment-maximizing*.

Instructional.

Art. 26. The Legislature will determine, on what, if on any conditions, an officer having at his own instance or otherwise been eliminated out of the stipendiary service, may be relocated. On this occasion, regard will be had to any such service as may be capable of being rendered by a functionary of this class, by means of experience acquired in the meantime; either in the business of some other subdepartment, or in the service, military or non-military, of some other state. Principle, the *aptitude-maximizing*.

Instructional. Ratiocinative.

Art. 27. From privates, the faculty of receiving promotion for extraordinary service, will not, it is supposed, be withholden. Principles,

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in the war against the French Revolution, mention is, of course, to be found in the histories of the time. If the account given of the matter in the year 1802 to the author of these pages, by a person high in rank and character, who at that time was about the person of his Royal Highness, be correct, —the mind of the Duke was, during that time, kept in a state of habitual confusion by the force of wine. If in that case any such secret orders had place, how far from effectual the policy was, in that instance at least, is now seen. But, in what proportion was it to the wine,—in what to the birth,—and in what to the education of the high functionary,—that what was disastrous in this case should be attributed? This is among the problems not so easily solved as stated.

1. *Appropriate-aptitude maximized*; 2. *Contentment maximized*; 3. *Inequality minimized.*

Instructional. Exemplificational.

ART. 28. Under the head of *promotion*, as well as under that of original location,—not inconsiderable is the instruction capable of being obtained from the observation of English practice.

1. On the occasion of original location,—in the Erudite grades, enormous, though scarcely with any approach to correctness ascertainable, is the waste committed by suffering to pass into private pockets the money which on this occasion might and ought to be made to find its way into the public purse. Great was the scandal, long and elaborate the judicial inquiry in consequence,—when, in the case of the late Duke of York, the discovery was made—that through that channel money was in the habit of finding its way into the pocket of the mistress of the Commander-in-chief. But instead of the feminine, suppose the pocket had been of the masculine gender: the evil to the service—would it have been less? In that case, the transition would have been at least as easy, and the eyes of the public not so open to the abuses capable of resulting from it.

Instructional. Exemplificational.

ART. 29. As to promotion, mark the regard shown to consistency. In the British service, the seniority system has place in the *scientific* armature classes, that is to say, the engineers and the artillery; and also in the marines.

In those other armature classes which, for distinction's sake, may be termed the *non-scientific*,—comparatively rare are the instances, in which (not to speak of demonstrated meritorious service) promotion is obtained through seniority alone: efficient cause, purchase, favour, and parliamentary influence; all these if not in undistinguishable, at any rate in hitherto undistinguished, proportions.

Instructional. Ratiocinative.
Exemplificational.

ART. 30. Note, that, in the case of the scientific armature classes, antecedently to location, examination has had place. *Question:* Why in these classes? *Answer:* Because the affording admission into these classes, without that same security for appropriate aptitude, would be too hazardous.

In the non-scientific classes, examination none. Why? Because military official situations are in so high a proportion the destined patrimony of the ruling few; and because, of every official situation, the value to the occupant is in the direct ratio of the remuneration attached to it, and in the inverse ratio of the labour necessary to the attainment of it. For this cause it is,—that of the official situations in which the degree of aptitude and quantity of labour necessary are minimized, the number is maximized.

Instructional. Exemplificational.

ART. 31. Turn now to the Anglo-American United States. In the Executive Department,—the utmost plenitude of useful power being, under a democratically chosen legislature, preserved from abuse, to wit, by the most efficient responsibility,—the business of military promotion is preserved at the same time from all perplexity. Seniority in service the general rule: in particular exigencies, by the act of an effectually-responsible functionary,—the President,—departure from it at any time; and this without discontentment, because without disappointment or surprise anywhere.* Principles, 1. the *aptitude-maximizing;* 2. the *contentment-maximizing.*

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* In relation to this matter, the following statement was, a few years ago, at the request of the author, delivered to him by a high functionary, whose situation afforded ample security for correctness.—In the United States, the President has the entire patronage of the army. At all times, he may place every member of it, from the private to the Commander-in-chief, in any grade he pleases, and keep him or send him upon his service as he pleases: he may accordingly put any man, officer or soldier, over the heads of any officers he pleases. Notwithstanding this latitude given to power by law, no instances are known, of any extensive complaint made of any alleged abuse of it.

This being the case, the evil obviated by this state of things is obvious. A man unfit for the particular *service* in question,—or for occupying the *grade* in question, on the occasion of any service,—is not, as elsewhere, appointed to the service through fear lest the non-appointment of him should give offence to some person having influence. Then, as to *grade*, a man unfit to occupy this or that rank is not lifted into it on no other ground than that of his having for a certain length of time been occupying this or that inferior rank, for which he has been fit or unfit. For the sake of coming at this or that individual whom the opinion of his extraordinary aptitude, or the more easily-formed opinion of the strength of his connexions, has marked out for an advance in rank,—twenty others, who have neither the one recommendation nor the other, are not pushed upwards to make way for that one.

"The President" (says section II of article 2 of the Constitution of 1787) "shall be Commander-in-chief of the Army and Navy of the United States and of the Militia of the several States, when called into the actual service of the United States." On the foundation of this text (and no other bearing upon the point has a careful scrutiny been able to discover) stands the above comment. Power of *location* is one thing; power of *dislocation* is another; power of command over the persons located, is a third perfectly distinct from both. That they should all three be united in one and the same hand, may, in the present instance, in the grade in question, be altogether fitting. Be it so: but, that they are not necessarily so in the nature of the case, is sufficiently evident; and that, in fact, they are not so anywhere in inferior grades, is matter of universal notoriety. Of dissension, on a point of such importance, would not prevention, to wit, be preferable to continued

Instructional. Exemplificational.

Art. 32. Note, that though in this instance under a government on which the public eye is so universally and constantly upon the watch, —and under a government so long and completely settled—no such ill effects as those here in contemplation appear to have ever been experienced,—it follows not that, with equal security, or with any adequate degree of security, without some such restrictions as those here proposed, that same power could be intrusted in any hands in a *newly-formed* political state.

Instructional.

Art. 33. To the Legislature it may on this occasion be matter of consideration,—whether, as to power of giving promotion out of turn, as per Art. 3, there shall be any and what difference as between *peace* and *war*. In time of peace occasions will not, in regular course, be apt to occur for the manifestation of extraordinary merit by the performance of extra-meritorious service: but by internal commotion, or by *collateral employment*, as per Section 18, occasion may incidentally be produced.

Instructional. Expositive. Ratiocinative.

Art. 34. To the Legislature it may also be matter of consideration,—whether, in time of peace, without prejudice to permanent precedence, the power of command might not, in this or that part of the scale of grades, be made from time to time to *change hands*: in such sort that for example, as between second-lieutenant and first-lieutenant, he who the former year was *second*, should during the second year become *first*, he who was first descending and taking his place: and so upwards in other grades. By this means, on each such scale of grades, each functionary will acquire experience in the business of all the grades: and whatever degree of unpleasantness may stand attached to a state of unremitted and immutable subordination, may thus be diminished.

Principles, 1. the *aptitude-maximizing*; 2. the *contentment-maximizing*; 3. the *inequality-minimizing*.

As to the proportion, between rise in grade and increase of pay, see Section 10, *Remuneration*.

Instructional.

Art. 35. For the consideration of the Legislature it will be, whether, in so far as promotion is determined, not by seniority in the establishment, but on the supposition of simply meritorious or extra-meritorious service,—the functionary or functionaries by whose immediate agency the location is in each instance determined, may not receive appropriate and useful information, from the opinions of such persons as, in virtue of their relative position, (relation had to the candidate in question,) will necessarily or at any rate naturally and ordinarily have possessed opportunities of forming a peculiarly well-grounded judgment as to his appropriate aptitude, in all points: always understanding that, by appropriate arrangements for the preservation of secrecy, effectual means are afforded for screening the votes from the action of corruptive influence.

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hazard?—prevention, that is to say, by appropriate enactment?

Note, that on this occasion, in the situation of President, the constant existence of adequate appropriate aptitude, intellectual as well as moral, is —not the less necessarily, though but tacitly—assumed. Assumed; and assuredly not without adequate reason, the appropriate moral aptitude; the number of the stipendiaries being comparatively so minute; the number of the fencible citizens, in the character of *radicals*, comparatively so vast; the eyes of the people, everywhere, and at all times, so widely open to the conduct of all functionaries; and more particularly of this highest.

But the *intellectual* branch—whence is it to come? The President, ever since the first, who could not but be a military man, has not (till the present year—1830) been so in any instance. In any of these instances, what can have been his opportunities for being acquainted with comparative degrees of appropriate aptitude on the part of military men?

The result is this. As to aptitude *superior* to the ordinary in any of those situations, it is not likely that, generally speaking, he should be able to form a well-grounded judgment on any other ground than that of the opinion of those military functionaries, whose conversation is within his reach; but that, for the security of his reputation on the occasion of so extraordinary and conspicuous an exercise of extraordinary power as that in question, he would be anxious to take for his leaning-stock the authority of the men of best general reputation among them, is no more than may reasonably be expected. So much as to the formation of a judgment on the question as to extraordinary plenitude of aptitude, on the part of the objects of choice. Remains the case of extraordinary deficiency. But of this, a non-military man will, in cases to no small extent, be a not inadequately qualified judge: not less so even than a military man: witness any generally conspicuous deficiency, either in moral aptitude, or in intellectual aptitude, as applied to the ordinary intercourse and concerns of life. For evil in this shape, the discretionary judgment thus allowed to the chief Executive Functionary affords a remedy: while the *seniority system*, if no such power be admitted, opposes an insuperable bar to all remedy.

Behold here, under a really existing constitution, which has for its end in view the greatest happiness of the community, and under which, to power in every situation, checks so efficient and adequate are applied,—the vastness of the power, which, for the purpose of maximizing security *ab extra*, may, without any the least danger to security *ab intra*, be established and conferred;—while under a fictitious constitution which has for its end in view the greatest happiness of the ruling one and the subruling few, the deficiency of useful power is joined with useless and mischievous power, in quantity so profuse.

Instructional.

ART. 36. Arrangements for this purpose suppose these:—

In the land-service, in each and every battalion or regiment, on the occasion of a vacancy in any one of the Erudite grades, the lowest being in the ordinary state of things the one first entered upon, collect, in the secret mode, the votes of the several individuals belonging to the ranks following: that is to say,—

1. The *privates* and *non-commissioned officers* belonging to that same battalion or regiment, by themselves.

2. The *Erudites*, belonging to that same battalion or regiment, by themselves.

Instructional. Ratiocinative.

ART. 37. This, for the information of the army minister and prime minister: to wit, on the principle of the *qualification judicatory*, applied, (as per Ch. ix. MINISTERS COLLECTIVELY, Section 16, *Locable who*,) with few or no exceptions, to all subdepartments of the administration department in general.

Instructional.

ART. 38. The number of the votes for the respective candidates being thus made completely known,—let the right and duty of *recommendation*, or say *provisional choice*, be, in the case of land-service in the hands of the *army* minister; or in the case of sea-service, in those of the *navy* minister: the ultimate choice in those of the *prime minister:* he taking either the individual so recommended, or any other, who, in his declared opinion is in a still higher degree possessed of the *appropriate aptitude.*

Instructional.

ART. 39. Antecedently to the collection of the votes as above,—a time will have been allowed, within which every candidate will have been at liberty to make known, by appropriate publication, any special instance of extra-meritorious service, or other grounds, if any, for promotion, which it has happened to him to have exhibited.

Ratiocinative.

ART. 40. Why, on this occasion, collect the votes of the privates?

Answer. *Reasons.* 1. That, in relation to appropriate aptitude in all points, the benefit may be taken of the opinion of all men so situated as that among them will, generally speaking, have been individuals to the greatest extent possible *percipient witnesses* of his conduct, in relation to those same points of aptitude. Principle, the *aptitude-maximizing.*

2. That, in the contemplation of the influence with which the state of these votations will naturally operate on the minds of the locating functionaries,—to wit, the *army* and *navy* ministers, and the *prime minister*,—the Erudite officers of all grades may find an adequate motive and inducement to conduct themselves with effective benevolence, in relation to those their subordinates. Principle, the *contentment-maximizing.*

Ratiocinative.

ART. 41. Why not render the aggregate of the opinions and wishes of these same percipient witnesses *decisive?*

Answer. *Reasons.* 1. Presumable comparative deficiency in respect of appropriate moral aptitude. The self-regarding interest which each individual has in his own comfort, being generally a stronger motive than sympathy for the public service: hence the danger lest a candidate, whose chief qualification consists in the favour shown by him to these same self-regarding interests, will be voted for in preference to those, whose qualifications are in a superior degree conducive to the welfare of the public service.

True it is, that at and during the time of actual service, on the degree of appropriate aptitude on all points on the part of officers will, throughout, depend in a more or less considerable degree the personal security of all ranks, that of private included. But the motive derived from this source is confined in its operation to the consideration of the conduct of the persons in question during that comparatively short portion of time; whereas the motive derived from the consideration of the dependence of the personal comfort of the subordinate on the conduct of the superordinate in relation to him, applies to the whole of the time during which such their relation to one another continues.

2. Presumable comparative deficiency in respect of appropriate intellectual aptitude. In each *armature* class, the greater the quantity of time labour and natural talent requisite to put a man in possession of the requisite degree of appropriate intellectual aptitude with relation to the service of that class,—the less, on the part of the privates, (understand such as have not been subjected to the test afforded by *examination*, before the General *Qualification Judicatory*, as per Ch. ix. Section 16,) will be their aptitude with relation to the forming a well-grounded opinion of appropriate aptitude in all its elements taken together, on the part of candidates.

Ratiocinative. Exemplificational.

ART. 42. In the early days of the revolution which gave birth to the Anglo-American United States, the officers elected were (it is said) in considerable and even principal proportions, those who engaged to put their pay into a purse common to them and the privates, and thereupon eat their meals with them in a common mess.

Instructional. Ratiocinative.

ART. 43. As to the collection of the votes

1. By apt notification, the preventive influence of the punishment is maximized.

2. In case of altogether ungrounded, or over severe punishment, the persons concerned in the infliction of it are made responsible; compensationally, punitionally, or reputationally only, according to the nature of the case.

3. As far as may be, by the apprehension of such responsibility, such inflictions are prevented, and the number of them is minimized.

Instructional.

Art. 7. In prescribing heads under which matter shall be entered in the military punishment book, the Legislature will have regard to the heads prescribed for matter belonging to penal suits as per Procedure Code.

Instructional. Expositive.

Art. 8. Examples of these heads are the following :—

1. The offence, *what*.
2. *Article* offended against, what.
3. The offence *when* committed.
4. Offender or offenders, *who*.
5. *Time* when *committed*, year, month, day, hour, in so far as known.
6. *Time* as above, when *information* was first given.
7. *Sufferers*, actual or eventual, by the wrong, who; for example, 1. the public, in respect of the service; 2. A military functionary in the rank of private; 3. If an officer, of what grade; 4. An individual or individuals at large.
8. *Judge* or Judges to whom information was first given, who.
9. *Witness* or witnesses, who: to wit, 1. for the pursuer's side: 2. for the defender's side.
10. *Witness* or witnesses, *by whom* respectively called, or whether spontaneous, simply informative (as per Procedure Code, Ch. viii. Judicial Application, vol. ii. p. 33,) included.
11. *Day* or days of *hearing;* if any other than that on which the information was first given.
12. *Sentence*, what: to wit, the terms of it.
13. Sentence, by *whom* pronounced.
14. Sentence, in *whose hearing* pronounced.

Instructional.

Art. 9. In this book will entry be made of all instances, not only of punishment inflicted under the name of punishment judicially decreed, but also of coercion employed of necessity, without view to ulterior punishment or satisfaction; employed, to wit, as per Section 7, *Discipline established*, antecedently to judicial accusation, in consequence of disobedience to an incidental order, or upon immediate view of an act of delinquency committed in contravention of some permanent regulation.

Instructional.

Art. 10. Of all such instances of coercion, information will at the earliest convenient opportunity be given to the registrar, by the superordinate officers, whether ordinary or Erudite, or say *non-commissioned* or *commissioned*, by whom or by whose orders the coercion has been applied. If without the giving of such information, any convenient opportunity of giving it has been let pass, the act of coercion will be considered as an act of delinquency—an act of wrong—and as such punished.

Instructional.

Art. 11. Punishment books will be kept in the radical as well as the stipendiary branch of the land military service.

Instructional.

Art. 12. So likewise in the sea stipendiary service.

Instructional.

Art. 13. In a navigable vessel in which a purser is employed, the purser, unless the office be committed to some other functionary, will act as registrar.

Instructional.

Art. 14. If the spot in which the transaction has place be a *navigable* vessel, in which by reason of its smallness no functionary by the official name of purser is employed,—or if it be a *boat* belonging to a navigable vessel, and at a distance from it,—or a place on land,—the functionaries in question being at the time under the command of an officer or private belonging to the sea stipendiary service,—report will at the earliest convenient opportunity be made to the commanding officer of the vessel to which the party in question belongs, under such pain as per Art. 10 as above.

Enactive. Expositive.

Art. 15. Book II. *Complaint Book.* In this register entry will be made of every information, by which oppression, or say wrongful hardship, is alleged to have been inflicted on a subordinate, by, or by order of, his superordinate, or superior in the same grade or rank.

Instructional.

Art. 16. For *registration*, the mode of proceeding will, in so far as the nature of the case admits, be analogous to that which, in the case of an ordinary judicatory, is delineated in Ch. xii. Judiciary collectively, Section 18, *Incidental Complaint Book*, Article 1 to 8.

Instructional.

Art. 17. Of the *heads* under which, on the occasion of a complaint, the matter will be entered, see for examples those in Art. 8, as above.

Instructional.

Art. 18. The legislature will at all times apply itself with anxious attention, to the invention and adoption of every arrangement,

which presents a promise of contributing to reconcile a freedom of complaint with exactness and promptitude of professional obedience; or by any other means, of contributing to the minimization of oppression, in this branch of the public service. It will accordingly in this view have all along an eye to the provision made in *Ch.* ix. Ministers collectively, Section 21, *Oppression obviated*, against oppression in all branches whatsoever of the public service.

Instructional.

Art. 19. In so far as, in any case, it lies in the power of an oppressor to produce suffering in any shape on the part of an intended oppressee, without exposing himself to experience suffering at the hands of any one,—all remedies against oppression, the above not excepted, cannot but be correspondently ineffectual. To give to the above arrangements what further degree of efficiency the nature of the case admits of, is the object of these which follow.

Enactive.

Art. 20. Of an act of oppression, alleged to have been committed against any military functionary, by any superior, whether in grade superordinate to, or co-ordinate with his,—information at the hands of any non-military person applying for that purpose, will be received by every military functionary, by whom any such complaint could have been received at the hands of any individual engaged in military service.

Instructional. Ratiocinative.

Art. 21. True it is, that in some cases, in the mind of a party informed against, there will be little doubt, or even not so much as any, as to the functionary with whom the information originated; when, for example, a party suffering is the only person in whose instance any knowledge or suspicion can have had place of the fact which is the subject of the complaint. But

1. In the first place, such will not be the case in every instance.

2. Even where it is, the irritation produced by a contest with a person other than the sufferer, in the mind of a party complained of, will not naturally be so great as if it were with the party himself.

Instructional. Ratiocinative.

Art. 22. A supposed remedy, which is obvious enough,—and which, in fact, has on one occasion or another, been employed,—is the institution of what may be styled a *secret information box*. But, by the nature of the case, any such channel of communication stands exposed to three distinguishable evils: evils which, taken together, present themselves as preponderant over any good capable of being derived from it, in addition to that which seems promised by the admission of non-military informers, as per Art. 20.

1. Evil the first. To one person alone, (say for example the registrar,) the power is intrusted of opening the box. By this person would, in this case, be possessed the faculty of bringing to view the information or suppressing it at pleasure. True it is, that of such suppression complaint might be made, through any, even the most public channel. But, though publication of it might, proof of it could not thus be made, without the disclosure of the person complaining; which is the very evil sought to be avoided.

2. Evil the second. Persons necessary to concur in the exercise of the power, are two or more. Beneficial consequence, the danger of suppression diminished: *per contrà*, a quantity of naturally producible delay, in length proportioned to the number of these same persons, indefinitely increased. By the simple negative act of not choosing to act in conjunction with the rest, by each one might be exercised the faculty of producing delay to an indefinite extent: to an extent, by which, in many cases, the design of the information might be frustrated.

3. Evil the third. For the purpose of suppressing all useful information, the receptacle might, by persons unknown, be secretly clogged up with papers conveying false information, or papers on other matters not furnishing any information whatsoever; by either of these means the proposed remedy might not only be completely frustrated, but covered with ridicule.

Enactive. Instructional.

Art. 23. For rendering the informant responsible,—compensationally or punitionally, or both, as the case may require,—in case of false information, accompanied with evil consciousness, or culpable inattention,—the same securities will in this case be provided, as in the case in which the party complained of is a non-military person. As to these, see *Procedure Code*, Ch. viii. Section 11.

Enactive. Instructional.

Art. 24. Exceptions excepted, exemplars of each proceeding in every such military complaint book, will, as soon as taken, (as per *Ch.* ix. Section 21, *Oppression*, &c. Art. 20,) be distributed; and, in this case, as well to the non-military judicatories, as to the several military offices, superordinate to that into which the complaint was delivered.

Enactive.

Art. 25. Exception is—where, and in so far as, in declared contemplation of the evil likely to ensue to the service of the defensive force subdepartments, by means of the information liable to be thereby conveyed to a hostile power,—the communication of the complaint, or of any of the proceedings occasioned by it, shall, by, or by authority from the legislature, have been interdicted.

Enactive. Ratiocinative.

Art. 26. In case of investigation, should it

and above that possessed by the labouring and non-military classes.

2. *Clothing*, greatly and constantly superior in comfortableness and appearance.

3. Security against the *diminution* of the means of external comfort *in general*, which the labouring classes stand constantly exposed to, by the constantly growing excess of population over the means of subsistence.

4. Exclusive possession of the *factitious dignity* inseparably attached to the denomination of *soldier*, and to his appearance in respect of habiliments and armature.*

5. Superior *amiability*, thence derived, in the eyes of the other sex.

6. Superior means of *cheerfulness* in respect of abundance of association, musical entertainment, and variety of local and social situation.

7. Comparatively greater *leisure* time; number of days in the week, and number of hours in the day, included. This not only in peace time, but even in war time, where the functionary is not in the actual presence of an enemy, or in immediate expectation of being so, or occupied in long and forced marches.

8. In case of casual bodily suffering by severe *wounds*, or loss of the substance or use of *bodily organs*, compensation secured under the name of *smart-money*. See Art. 1.

Instructional.

Art. 6. If, to those who choose it, *furlough*, that is to say liberty of absentation for a more or less considerable portion together of the whole year, can, as a matter of course, be allowed, consistently with the good of the service, including appropriate aptitude on their part,—here will be an additional item in the account of desirableness, as well as a proportionable reduction in the expense.

Instructional. Exemplificational.

Art. 7. 1. In the Prussian service, soldiers have of late years been allowed to be on leave of absence, for as much as three-fourths of the year; pay ceasing during that time.

2. So, in the practice of the Helvetic confederacy, during eight months in the year, the same indulgence has been given to the *German* part of the soldiery.

Instructional. Ratiocinative.

Art. 8. Independently of rank and grade, shall pay be made to receive any and what addition, at any and what time, from mere length of service? For the affirmative, sole reason assignable, *prevention of desertion*. But if the situation of the individual is rendered to such a degree desirable, as that at all times the number desirous of being admitted shall be greater than is desired to be actually maintained, the reason will not be applicable. If at any time for addition to desirableness, addition to pay is necessary, it may, with better prospect of advantage, be applied to *present*, than to future contingent time. As to desertion, to no other rank than that of *private* can the danger of it have any application: it cannot to that of *officer*.

Instructional.

Art. 9. As to desertion, if at all times all who are willing to cease to serve are permitted so to do, any precaution against that occurrence will, in the ordinary state of the service, be unnecessary. In two states of things alone can it be needed: to wit, 1. in a state of actual war; 2. in a state of peace, if the number of those desirous to quit should be so great, that by the substitution of that same number of recruits to veterans, the deterioration to the strength of the aggregate of the force in the branch in question would be perceptible.

Instructional. Expositive.

Art. 10. 1. Rank, suppose that of private. Purposes for which, in this case, remuneration is or may be necessary, are two: 1. Enlisting, that is to say, entering into the engagement to serve.*

2. Actually serving, that is to say, fulfilling that same engagement when entered into. Enlisting, a momentary act; serving, a continuous act.

Instructional.

Art. 11. Intimate is the connexion between the quantity of the matter of remuneration employed in the one shape, and the quantity employed in the other. The greater the quantity employed, for and during the time of service, the less the quantity needed to be employed in the purchase of the consent to enter into the engagement.

Instructional.

Art. 12. In two cases, no money for the purchase of such consent will be necessary. 1. If the enlistment be compulsory: as to which, see Section 5, *Term and Conditions of Service*. 2. If without expense so employed, the terms of service are, upon the whole, sufficiently desirable to produce voluntary enlistment.

Instructional.

Art. 13. Note always, that in the quantum necessary, the difference between a time of peace and a time of war will, of course, make

* The *point d'honneur* runs so high in the French army, that a soldier once degraded can never reenter the service in any capacity; any attempt to force him into it would produce mutiny among the men. For the same reason, a soldier never receives a blow, even from his officer, without resenting it *sur le champ*. If he did, in the first place his comrades would no longer keep company with him, and in the next, the officer that committed the outrage would inevitably be put to death.

* In English practice, matter of remuneration thus employed is styled *bounty*.

a difference more or less considerable. In time of peace,—that time being time present, time of war future and contingent,—the probability of war will be more likely to be undervalued than overvalued. But supposing the arrival of a state of war, actual or nearly impending, the question as to bounty and the amount, will, of necessity, be determined by the circumstances of the time.

The time for bounties, is the time of urgency: and as the urgency has no determinate limits, so neither has the necessary quantum of the bounty.

Instructional. Expositive.

ART. 14. Essential, with a view to practice, is the distinction between that part of the remuneration which is received in money, and that which is received in all other shapes put together—say *in kind*.

Instructional. Ratiocinative.

ART. 15. Of that which is received in kind, the greater the proportion the better.—Reasons:

1. Of that which is received in kind, the real value in use will be the same at all times: whereas, of that which is paid in money, the value in exchange, and consequently the quantity of the means of comfort receivable, is constantly exposed to diminution. Principle concerned, the *contentment-maximizing*.

2. In both shapes taken together, Government will, of course, at each point of time, give, as far as it is able, as large a quantity as it deems necessary for the good of the service: and, as to the money part, how much greater soever the value of money may happen to be at the time of enlistment, Government cannot at any subsequent time, without breach of faith, give itself, at the soldier's charge, any indemnification for the extra expense in that article: whereas, as to that part which is to be furnished *in kind*—though, by and in proportion to rise of prices, it must unavoidably, and without compensation, remain exposed to loss, yet it will also have the benefit of any fall in money prices; and this without prejudice to the comfort of the functionary. Principle, the *expense-minimizing*.

Instructional. Exemplificational.

ART. 16. In British India, even in the rank of *private*, in the case of such of the natives as are enlisted in the *land* service,—to such a degree desirable, and in all particulars taken together satisfactory, is the condition of the individual in this situation, compared with that of the bulk of the population,—that no *bounty* on *entrance* is ever given: on the contrary, permission to enlist is, at all times, an object of competition to a multitude of candidates.*

Instructional.

ART. 17. Note, that on entrance into the service, that is to say, in the lowest grade,—promotion into the several superior grades, with whatsoever increase of remuneration it may happen to be attended,—will of course enter, and be seen to enter, into the account of the matter of compensation, and thence at the same time into that of the subject-matter of competition.

Instructional.

ART. 18. So likewise any title or titles of honour, which for extra-meritorious service a man may have a chance to receive.

Instructional.

ART. 19. Note also, that in the rank of officer, the several grades are in themselves so many titles of honour, rising one above another in the conjunct scales of power and factitious dignity.

Instructional. Ratiocinative.

ART. 20. Prospect of provision, in case of incompleteness of appropriate aptitude,—the deficiency being produced, whether by old age, or loss of the substance or use of any bodily organ or organs; and mental insanity being supposed provided for in the case of military as in the case of non-military persons at large: say, in one word, in case of *invalidship*. Different in some respects are the ruling principles in the case of invalidship produced by old age, from what they are in the case of casualties.

Ratiocinative.

ART. 21. Reasons in favour of such provision in the case of superannuation, are the following:

1. In a non-military state, the man might, to an extent more or less considerable, have possessed the faculty of making provision for this contingency by frugality and good economy: in the military service, of this there is hardly any chance.

2. In a non-military state, by passing his life in the bosom of his family connexions, he would have possessed the opportunity of engaging their affections in his favour, and finding in those affections the means of subsistence: in his military state he will, unless by accident, be cut off from this resource.

3. By these considerations—if for this contingency provision was not made by Government by the terms of the engagement,—men

* At any rate, such it was antecedently to the horrible massacre perpetrated in the year 1827, in consequence of a mutiny exhibited by simple non-compliance, unaccompanied by any offensive or aggressive operation. In conformity to the all-comprehensive and constantly observed system of policy maintained under English government, the author of this carnage remained uncensured, and even unprosecuted.

who were governed by prudential considerations,—and who, as such, would, in this as in any other situation, afford correspondent promise of good conduct,—might be deterred from entering into the service. Principle concerned, the *aptitude-maximizing*.

4. From the withholding of this provision, the sufferings inseparable from the decline of life in every situation would be aggravated; and between men at that time of life, and men at earlier periods of life, the inequality increased. Principle concerned, the *inequality-minimizing*.

5. Altogether different is the ground of demand in this case from what it is in the case of pensions for relatives: as to which, see *Ch.* IX. MINISTERS COLLECTIVELY, Section 15, *Remuneration*, Art. 46, p. 270.

Instructional.

ART. 22. On the occasion and for the purpose of *invalidship*—in the instance of each individual, care will require to be taken, by appropriate inspection and examination, to take advantage of whatever mode and degree of *incomplete aptitude* may have been left to him, with relation to *collateral employments*, suited to his particular case: *collateral*, that is to say, with reference to actual combat, and those manipulations, evolutions, marchings, and other modes of self-conveyance, which are preparatory to actual combat.

Instructional.

ART. 23. Of *incompleteness* in respect of appropriate aptitude, with reference to Defensive Force service, the efficient cause will be—absence or deficiency in respect of some one or more of those *qualities*, the possession and manifestation of which are necessary to the apt performance of the several operations in Art. 24 mentioned.

Instructional.

ART. 24. Qualities requisite and desirable in Defensive Force service, and more especially in the *ungraded*, or say the *purely obedient ranks*, may be thus enumerated.

I. On the part of each individual,

1. Intrepidity.
2. Exactness in obedience.
3. Promptitude in obedience.
4. Vigilance.
5. Hardiness, that is to say *power*, accompanied with *will*, to endure appropriate *hardship* in every shape.
6. Activity (appropriate) including appropriate dexterity, or say adroitness in the several manipulations and evolutions.

II. On the part of numbers, acting conjunctly in the same place, at the same time.

7. Simultaneity, or say, *simultaneousness* of motion.

Instructional.

ART. 25. In case of invalidship, as per Art. 22, the legislator will consider and determine, in relation to what invalidship-employments, military and non-military together, Defensive Force functionaries will remain apt and applicable,—after and notwithstanding deterioration of aptitude, by loss of substance or use of various limbs or organs.

Examples are as follow:

Limbs or Organs lost or disabled.	*Employments, aptitude for which may be remaining notwithstanding.*
1. One eye.	1. Serving in a *garrison*. 2. Serving as a *guard* to the *exterior* of any public edifice. 3. Serving as a *guard* in the *interior* of any public edifice: in particular, in a museum of any kind, to preserve the articles from *theft* and active *destruction* or *deterioration*.
2. One *hand* or *arm* lost or rendered motionless.	4. Serving as per No. 3 above.
3. One *foot* or *leg* lost or rendered motionless.	5. Serving as per No. 3 above.
4. One *hand* or *arm*, and likewise one *foot* or *leg*, lost or rendered motionless.	6. Serving as per No. 3 above.
5. *Both hands* or *arms*, or *both feet* or *legs*, lost or rendered motionless.	

Instructional. Exemplificational.

ART. 26. Of collateral employments that present themselves as suitable to the above cases of invalidship, or some of them, examples are the following:

1. Training recruits.
2. Garrison service, as above.
3. Service as exterior local guards, as above: guards (where marching, or considerable locomotion, is not necessary) for the protection of the exterior of Government or other public edifices.
4. Service as interior local guards, as above: guards placed in the interior of public edifices, such as *theatres*, and the several apartments in *public libraries* and *museums* of all sorts.
5. Operating in private manufacturing, and other profitable establishments conducted on a large scale: Government contributing what addition shall in the case of each individual have been found necessary, where the manufacture could not, consistently with its profit, afford pay to an amount sufficient for his subsistence.

Instructional. Ratiocinative.

ART. 27. To the Erudite grades, scarcely does any such invalidship-provision,—except in the case of wounds received, or loss of the substance or use of a bodily organ, such loss being caused by actual service,—present itself as applicable.

Reasons:

1. In that rank in life, due regard to such contingencies may reasonably be expected to be had, on the occasion of the *pecuniary competition*.

2. Unsuitable to such their condition may be thought to be the being subjected to examination by authority, and the having their infirmities scrutinized into, for the purpose of their being distributed, as per Art. 25, among collateral employments.

Instructional.

ART. 28. In respect of making provision for a man's subsistence,—suppose it determined that, by reason of invalidship, he is no longer in a state of complete aptitude for appropriate service, as above,—three options will call for the determination of the Legislature.

1. Retaining him on the list and aggregating him to some determinate corps, with his pay in the whole or in part continued to him, and with employments one or more assigned to him, in quality of *invalidship-employments*.

2. Discharging him from the service, but continuing to him, in whole or in part, his pay down to the time of his decease.

3. Discharging him from the service without pay at the expense of the public, or means of subsistence in any shape.

Instructional.

ART. 29. That in whatsoever service exercised, *some* employment,—profit-seeking employment,—so it be not accompanied with *unwillingness*,—is more conducive not only to good *economy* but to individual *comfort* than idleness is,—seems almost too obvious, as well as indisputable, to be worth mentioning. But what may be worth mentioning is, that it consists not either with *good economy* or with *comfort*, to keep in a state in which he is incapable of earning anything towards his own subsistence, any man for whom profit-yielding employment could be provided, either by those at whose expense he is so kept, or by any other *employer*.

Thus much as to what *ought* to be done. Principles concerned, 1. the *contentment-maximizing*: 2. the *expense-minimizing*.

Instructional. Exemplificational.

ART. 30. Now, as to what has been *commonly* done. To provide invalidship-employment in the above or any other shape, is a task requiring more attention than, under any form of government, has as yet been felt necessary, and accordingly paid by rulers, either to the financial interests of the whole community, or to the comfort of this class of the individuals over whom they rule. Whatever is given,—the course has been, to give it at this stage of life *gratis*: that is to say, without requiring service rendered to any person in any shape in return for it. Modes in which such gratuitous provision has been made, *two*: one, the granting to each of the individuals in question an *annuity*, styled a *pension*, in the shape of money; another, the keeping them congregated in large bodies, in one edifice, in such manner as would be necessary, supposing them in such sort *sick* as to be unable to stir out of it. *Hospital* being the appellative applied to designate an edifice provided for the reception and curation of the *sick*, *Hospital* has been the term applied to designate an edifice for the class of individuals in question sick or not sick.

Instructional. Ratiocinative.

ART. 31. By every principle that has any application to the case, this aggregate mode of provision stands condemned. Principles, 1. the *contentment-maximizing*; 2. the *inequality-minimizing*; 3. the *expense-minimizing*.

1. Instead of being at liberty to choose the place most agreeable to him, and in it the society most agreeable to him,—every man so provided for is forced into a place, and kept in a society, both of which may, to any degree, be disagreeable to him; so likewise to those into whose society he is forced. So much for the *contentment-maximizing* principle.

2. To some of these men the place and society may to any degree be agreeable; to others, in any degree disagreeable. So much for the *inequality-minimizing* principle.

3. In every instance in which this *Hospital* mode of making provision for the superannuated or otherwise relatively unapt Defensive Force functionary has been in use,—the expense per head has, in an enormous degree, been found to exceed the expense at which, with the same degree of comfort, the individual might have been maintained, and indeed, in other instances, actually was maintained, at the expense of the same Government, in a state of liberty. So much for the *expense-minimizing* principle.

Instructional.

ART. 32. In every instance, regard for the interest of this portion of the *subject many*, has been the *pretence*: in every instance, regard for the interest of the *ruling one* and the *sub-ruling few*, has been either the sole, or at least the predominant cause. To the *sub-ruling few*, pleasure from the gratification of the correspondent taste, with praise for the goodness of that taste; and (in the shape of highly-endowed official situations in the establishment, together with the correspondent patronage) pickings out of the expense. To the *ruling one*, the patronage paramount, together with correspondent *honour* and *glory*, and reputation of *effective benevolence*. Ask, on this occasion, among all those the regard for whose

interest is the *assigned* cause of all this addition to the expense, what is the proportionate number of those to whom a share in these pleasures, or in any of them, descends.

Instructional. Exemplificational.

Art. 33. In England, at an expense per head some number of times as great as that which is necessary to the same degree of comfort in a state of liberty,—two of these *Hospital-Prisons*, or say *Prison-Hospitals*, have for many years been kept on foot: For Army functionaries, *Chelsea* Hospital; for Navy functionaries, *Greenwich* Hospital.

In France, the practice was engendered by the ostentation of the longest-reigned of all weak-minded despots and tyrants. Witness the *Hôpital des Invalides*.

Once at least, if not oftener, has this topic been brought before the English House of Commons; with what fruit, Chelsea and Greenwich still declare.

In Chelsea Invalid Hospital,—maintained, males, , females, ; total, * For keeping and governing them, functionaries, *mistered*, *squired*, or higher titled, 27; untitled, chiefly of the *clerk* class, 56: total, 83. Governors, under the name of Commissioners "the *great* Officers of State." Who these great men are, what is before the public does not show.

In Greenwich Hospital, besides *Governor* and *Lieutenant-Governor*, the pleasure of command is provided for *Captains*, with the title of *Esquires*; and, under them, eight *unsquired Lieutenants*. What was not worth inquiry was, whether, where nothing is to be done, the pleasure of being *under* command is equal to the pleasure of exercising it! Say, however, that a vast stone building is *a ship at sea*, and "everything is as it should be."†

Instructional.

Art. 34. In an aristocracy-ridden monarchy, in which, in addition to the power of a stipendiary military force, the matter of *prosperity*, (composed, as it is, of the matter of *wealth* and the other *objects of general desire*,) acting in the character of matter of *corruption*, is regarded as an indispensable *primum mobile*, as well as support, to Government,—the aggregate of these useless and emolumented situations, adds, to the value of the service they render to the several possessors with their respective locating patrons in the shape of matter of prosperity, the *ulterior* value of the service they render to *matchless constitution* in the character of matter of corruption.

Instructional. Ratiocinative.

Art. 35. Remuneration pecuniary for *extraordinary merit* in *ordinary service*. Here, by the very nature of the case, anything like exact approportionment of remuneration to service is impossible. All that in the way of instruction can be done is, to caution against a naturally recurring argument in support of waste. In the case of each individual, so far as it is in a pecuniary shape that prospect of eventual remuneration is applied,—the remuneration, to produce its desired effect, must be raised, not only in proportion to the value of the service, but in proportion also to the quantum of the matter of wealth which it finds the benemeritant in possession of. Among men who have engaged in the military profession, instances are not wanting of those whose incomes have been not less than a thousand times as great as those received by persons of the least opulent class, which, in such vast proportion, is also the most numerous. From this fact, an inference that may be drawn, is—that, where to produce the necessary impression on the mind of a man of the least opulent and most numerous class, *one* pound would suffice, there, to produce an equally effective impression on the mind and conduct of a person of the above-mentioned opulent class, a thousand pounds would be necessary. The conclusion is that—consistently with good economy, no such exact fixed appointment is possible.

Moreover, in the eyes of that same most numerous class, including that of privates in the whole of the stipendiary force in both branches, —any such fixed sums would, if thus proportioned to pecuniary circumstances, be apt to present the idea of partiality: of partiality in favour of the relatively opulent few, to the detriment of the relatively unopulent many. Principle concerned, the *contentment-maximizing*.

Instructional.

Art. 36. *Natural honour augmented:* to wit, by the hand of Government, as per *Ch.* ix. Ministers collectively, Section 15, *Remuneration*, Art. 18 to 28. In this may accordingly be seen the only shape in which, with unquestionable propriety, remuneration for *extra merit* in *ordinary* service can be bestowed in either of the two branches, land and sea, of the Defensive Force Establishment.

Instructional. Ratiocinative.
Exemplificational.

Art. 37. With increased force, if there be any difference, does this same reasoning apply to the case of extraordinary merit, exemplified in extraordinary service.

* The Parliamentary returns give no means of filling up these blanks. The gross number of *In-Pensioners* only being afforded. In 1839–40, it was 539.—*Ed.*

† In Greenwich Hospital, invalided functionaries maintained—males, 2,710; females (widows of seamen, under the name of *nurses*) 162: total, 2,872. For keeping and governing them—members of the aristocracy, *mistered*, *squired*, and *higher titled*, with proportionable pickings (among whom one lordly-paid lord) 33: *untitled*, chiefly of the *clerk* class, 63. *Grandees*, among whom, under the title of *Directors*, the patronage of all these situations is shared, 24; of whom, five *Lords*, one of them,—on the matchless-constitution self-judicative principle—Governor over himself.

Example: case of *Major André*, in the war which ended in the establishment of the Anglo-American United States. Over and above all risks of honourable death, an ignominious death, encountered and suffered through endeavour applied to the rendering of a supposed important public service: the act being either demeritorious or extra meritorious, according to the interest with reference to which it was contemplated.* The Americans, according to their principles, did right in putting him to death; the English, according to their's, in honouring his memory with a public monument.

Instructional.

ART. 38. *Smart-money.* Compensation for *warfare-casualties:* in divers particulars, it will be seen differing from *remuneration.* Remuneration supposes exertion: not so of necessity, receipt of compensation for casualties. If for such casualties no compensation were provided, pay would have the effect of a bounty upon cowardice. Compensation for warfare-casualties is not exposed to abuse, unless it be so high, that otherwise than in actual service a man would spontaneously subject himself to the casualty, for the purpose of obtaining the compensation. Principles concerned, 1. the *external-security-maximizing:* 2. the *aptitude-maximizing.*

Exemplificational.

ART. 39. Of *warfare-casualties*, examples are the following:—

1. Loss of the *substance* of a limb or other bodily organ: eyes, for example, one or both; other organs should be distinctly specified, for the purpose of exclusion or admission.

2. Loss of the *use* of limb or organ.

3. Loss, complete, of aptitude for service; by loss of general health.

4. Wounds and diseases not productive of loss—complete or comparative, of aptitude; yet incurable.

5. Wounds and diseases curable.

Principle concerned, the *aptitude-maximizing:* resolution to encounter death and wounds without flinching, being in this function the characteristic feature of appropriate moral and active aptitude.

Instructional.

ART. 40. Of such compensation, appropriate shape—1. for casualties of the *incurable* class, Pension for life: 2. for those of the *curable* class, a sum once paid.

In the case of those of the incurable class, for means of further provision, see the Articles relative to *invalidship:* Art. 20 to 34.

* It was that of a spy, sent in consequence of his own offer—not merely to see and report, but to endeavour to corrupt and engage to desert to the service of an attacking enemy, a military officer in high command.

Instructional. Ratiocinative.

ART. 41. In any *rank* above the lowest, the Legislature will consider and determine, whether to every or any remuneration in the shape of *grade* and *power*, any and what addition shall be made in the shape of *pay.*

Reasons *against* such addition, these:

1. Grades rising one above another in such manner as is customary, are necessitated by the very nature of the service.

2. By every promotion, addition is accordingly, in the very nature of the case, made to *power* and *dignity.*

3. But, by addition of reward in one shape, it seems not easy, if possible, to say why a demand should be produced for addition in any other shape;—why money should be necessary to induce men to accept of addition to power and dignity. Subtraction of money would, if any, seem the more needful and reasonable change.

4. In this as in other cases, the less the reward looked to, the greater the relish for the service, and thence, so far the aptitude, probabilized.

5. Immense is necessarily the waste—where, while promotion follows seniority, additions to pay accompany it through a line of grades. To come at one individual,—recommended for promotion, by which soever consideration, merit or favour,—the correspondent pay is given to all his seniors, in a number to which there are no limits. See Section 6, *Promotion.*

6. If pay is thus made to receive additions corresponding to lengths of service, additions over and above the necessary additions made to power and dignity,—still greater should be the demand for it in the case of the private, if by him no such additions to power and dignity are received. Principle, the *expense-minimizing.*

Instructional.

ART. 42. True it is—that, under the pecuniary competition,—which (as per Section 4, *Stipendiaries, who;* Art. 34) will have had place on the first location,—any addition to pay, by whatsoever cause about to be effected, whether this or any other, will have been taken into account. But a benefit thus contingent and remote, seems more likely to be under-valued than over-valued; and the more it is under-valued, the less, under the pecuniary competition, will be the sum bid for it; the greater therefore upon the whole the expense to the public.

Ratiocinative.

ART. 43. Reasons in favour of such additions, these:

1. Without proportionate extra pay, men possessed of appropriate intellectual and active aptitude,—reference had to extensive command,—would not be to be had: they would

be drawn aside from this *public* occupation to other *private* ones.

2. In the case of the scientific armature classes in particular,—for the acquisition of the appropriate intellectual aptitude requisite, a long course of more or less severe *mental* labour, antecedently to entrance into the service, will always be necessary.

3. If the extra pay were confined to these same *extra-erudite* armature classes,—here would be an invidious distinction established between the classes of the one description and those of the other: an invidious distinction, having for its natural consequences, on the one part *contempt*, on the other part *envy* and *resentment;* on both parts, *antipathy*, and consequent diminution of the facility of intercourse necessary to maximize the efficiency of mutual co-operation in the business of the public-service. Principles concerned, 1. the *external-security-maximizing;* 2. the *aptitude-maximizing;* 3. the *contentment-maximizing.*

Instructional.

Art. 44. In the above considerations may be seen an additional benefit produced, in proportion to the *number* of those to whom the qualification in question shall have been imparted, by means of the *general instruction system*, as per *Ch.* ix., Ministers collectively, Section 16, *Locable, who.* The greater the number of competitors, the less the quantum of the matter of reward necessary.

Instructional. Exemplificational.

Art. 45. Neither in the practice of ancient *Greece*, nor in that of ancient *Rome*, will be found, either such accompanying *rise of pay with rank* as in modern practice;—or, even between pay of officers taken in the aggregate and pay of privates, any difference approaching to that which has place at present in the service of the several European Governments, and in particular in that of England; in which country, from causes which will be seen, it is more abundant than in any other.

In *Greece*, under *Xenophon*, when letting out himself and the corps under his command to a sovereign of Thrace,—the pay of a commander was twice that of a private; of the commander-in-chief *twice* that of a *sub-commander:* no more than *four* times that of a *private.*

In the *Roman* service, *before* the time of the *Triumvirate*,—the pay of the sub-commander styled a *centurion*, was no more than *twice* that of a private: on distribution of *gratuities* after a triumph,—gratuities analogous to the modern prize-money—proportion *the same.**

Instructional. Ratiocinative.

Art. 46. Officers. 1. *Clothing.* One means of lessening the expense of officers in the article of clothing, and thereby diminishing the aggregate of their remuneration, by enabling them to increase the amount of their bidding for their pay on the occasion introductory of the pecuniary competition,—may, in some cases, be—the providing at Government expense the clothing of the officers as well as that of the privates;—and requiring that no dress should at any time be worn by them, other than the military dress attached to their respective grades. Principles, 1. the *inequality-minimizing;* 2. the *expense-minimizing.*

Instructional. Ratiocinative.

Art. 47. Collateral advantages would be the following:

1. The functionary being thus at all times distinguished from non-functionaries, and from functionaries belonging to other departments,—his responsibility would thereby be increased: the endeavour thus to put himself off for a person in a condition in life other than his real one, being, on this supposition, a punishable offence. Principle, the *aptitude-maximizing.*

2. Among the functionaries in question, those superior in the scale of opulence would thus be so far divested of the means of obtaining unmerited respect, at the charge of those of their comrades whose place was below theirs in the scale of opulence. Principles, 1. the *contentment-maximizing;* 2. the *inequality-minimizing.*

Instructional. Exemplificational.

Art. 48. 3. In English practice, instances have place, in which, to a greater or less amount, the expense of the habiliments depends upon the will—not of the Legislature, the Prime Minister, or the minister of the sub-department,—but of some inferior superordinate. By useless, enormously expensive and frequent changes in habiliments, enormous has been the amount of the *income-tax* thus indirectly, but not the less effectually imposed. Among the consequences,—on the part of those in whose instance pay constituted the sole means of subsistence, the necessity of contracting debts without the means of discharging them. One of the refinements this, of the tyranny exercised by the aristocracy of opulence. A premium on the exercise of this power of taxation, is the patronage exercised by the appointment of the furnisher of the useless supposed decorations.

Instructional. Ratiocinative.

Art. 49. Officers. II. *Messing.* Circum-

* See Hume's Essays—Essay on Populousness of Ancient Nations.

Under Mark Antony and the Triumvirate, the proportion of the Sub-Commander styled the *centurion* was indeed increased so as to be as five to one. Under Cæsar, in the course of the Gallic war, in the case of gratuities the proportion had been as high as ten times. But Cæsar, always pre-eminent in prodigality, and at that time making preparations for universal conquest, was employing himself in this way in gaining influential partisans.

stances of country and time allowed for,—to the constituted authorities it will belong to consider and determine—whether in any and what respect the amount of the expense bestowed among officers when *messing* together, shall be taken for the subject-matter of regulation. On the one hand, retrenchment thereby unavoidably made on liberty, may, on that part, operate as a cause of discontentment. On the other hand, if the fixation be left to individuals,—especially to individuals in higher and better paid grades,—the power of determining the question of the expense may operate as an instrument of oppression at the charge of the less opulent in the hands of the more opulent. Principle, the *contentment-maximizing.*

Instructional.

ART. 50. The number of officers in a grade being less and less as the grade is higher and higher, two expedients are thus presented by the nature of the case, as capable of obviating oppression in this shape.

1. Diet being the same,—the price paid may rise in proportion to the pay attached to the several grades.

2. The fixation of the price may be peformed by *votes:* in which case it will be in the power of the lowest paid to prevent the price from being oppressive to themselves.

Instructional.

ART. 51. Note, that without the latter expedient, the former would not suffice. For still, a superordinate, in whose instance the amount of private income bore a large proportion to the official income, might, for increase of luxuriousness, set the expense,—though in this case at his own charge,—at a mark, at which the amount of it might be oppressive to the lower paid subordinates.

Instructional.

ART. 52. Note, that for the purpose of more luxurious living than the mess afforded, the more opulent might be disposed to *absent* themselves from it: thereby leaving the less opulent, as it were, in a state of degradation. But if each of them were at all times obliged to pay alike, whether present or absent,—the degradation is not so marked, as not to be capable of receiving an adequate compensation from the improvement in the diet.

Instructional. Ratiocinative.

ART. 53. The Legislature will judge whether, in case of the death of the functionary from wounds received in actual service, provision in any and what shape shall be made for any of his genealogical relatives; and if yes, in what mode of relationship.

Altogether different is the footing on which the demand for post-obituary provision stands in the case of this particular official situation, from that on which it stands in the case of official situations in general, as per Ch. ix. Section 15, *Remuneration*, Arts. 46, 47. In that general case, the provision operates as a bounty on increase of population simply: in *this* case, if, on the one hand, it operates as a bounty on population, on the other hand it operates as a bounty upon *courage:* it counteracts the bounty which nature gives upon *cowardice.* To this purpose, see what regards smart-money, as per Art. 38. Principles, 1. the *external-security-maximizing;* 2. *the aptitude-maximizing.*

Exemplificational. Instructional.

ART. 54. Accordant with the principle here referred to is that, by which, as to this matter, conduct appears to have been determined in the Anglo-American United States. Witness, Acts of Congress—Act of March 16, 1802: applying to smart-money, as above, and extravasational remuneration taken together.

I. Of right to *compensation.*

Efficient cause—I. Disability by wounds, or otherwise "while in the line of his (the functionary's) duty in public service." Compensatee, or say receiver of the compensation money, the functionary so disabled.

Efficient cause—II. death "by wound received in actual service." Compensatee in this case—

1. The "widow," if any.

2. If no widow, "child, or the children conjointly; that is to say, if respectively," under sixteen years of age. Quantum—for five years, half the monthly pay the deceased was entitled to at the time of his death.*

In the case of *disablement*, to the *President* for the time being, power given, for adjusting the allowance.

In the case of *death*, no such power. Instead of a power so given, fixation made by the Legislature itself.

Exemplificational. Ratiocinative.

ART. 55. According to appearance, the rational cause of the distinction is this. In the case of *death*, the alleged efficient cause of the right is an invariable quantity, and the existence of it a matter out of dispute: not so in the case of *disablement.*

Instructional. Ratiocinative.

ART. 56. Neither on this any more than any other occasion, should be out of sight, so much as for a moment, the incontrovertible *rule*—That the sole proper quantum of reward in all shapes at public expense, is the least that any equally apt person will consent to serve for.

Reasons. 1. Thus, *all* are content: Principle, the *contentment-maximizing.*

2. Anything more would have to be provided—for the hundreds and the thousands,

* Ingersal's Digest of the Laws of the United States, from March 4, 1789, to May 15, 1820.—Philadelphia, Maxwell, 1821.

at the expense of the millions: the millions never consenting, mostly unwilling, and in so far *not content*. Principles, 1. the *expense-minimizing*. 2. The *contentment-maximizing*.

Instructional. Exemplificational.

Art. 57. As a means of reduction, though comparatively inadequate, note in the first place, simple *sale*. In English practice, in the officer grades, so great is the competition, and so many the rich individuals to whom the office is an object of ambition, with little or no reference to the amount of pay to be received,—that the possession of the grade is not only a known but an authorized subject-matter of sale: of sale, partly on Government account, partly on private account: the two modes being blended, in a manner far too complicated to admit of description here.

Instructional. Exemplificational.

Art. 58. Nor yet in the rank of *private* is it without example. A hundred pounds sterling was, at one time, the known price for the situation of private in the corps called the *Horse Guards*.* This corps, however, was not in use to be sent upon actual service, except when the Monarch himself took the field; a custom which was not broken through till towards the conclusion of the second war against the French Revolution.

Instructional. Exemplificational.

Art. 59. In the French service, sale is not in use. Of this difference between the practice under the two Governments, the efficient cause may be seen in *matchless constitution*. Of this fictitious constitution one fundamental principle is that which prescribes the imposition of taxes, to an unlimited and continually increasing amount, on the indigent many, for the further and further enrichment of the already opulent few. For the accomplishment of this object, the *defensive force* subdepartment, more particularly the *land*-service branch, affords a pre-eminently apt and commodious field: number of official *situations* maximized, number of *degrees* in the scale of grades maximized; *quantum* of needless *remuneration* in each situation, maximized:† by the power of sale, value of each such situation increased. Thus is *depredation maximized*. Of that force which should be purely *defensive*, but which, as against the people whom it pretends to defend, is thus rendered *offensive*, the magnitude is thus increased: and thus, by the same means, is *oppression maximized*.

Instructional. Exemplificational.

Art. 60. Now *as to pecuniary competition*, as exemplified in English practice. True it is—that in no instance, it is believed, in any regular form, authorized, avowed, or even generally known, has diminution in this mode, either on public or private account, received its application.

Instructional. Exemplificational. Ratiocinative.

Art. 61. 1. In the nature of the case, to an extent more or less considerable, in an irregular and unmeasured shape, it cannot but have had place.

2. Be the commodity what it may, if it be a generally known subject-matter of sale,—especially if not only in fact, but also of right,—a subject-matter of competition is what it cannot fail to be, in some way or other, to persons desirous of being purchasers.

3. In every case without exception were it brought under the auctioneer's hammer, exactly as an annuity to the same pecuniary amount encumbered with the obligation of personal service in a military or any other shape, thus and thus only would the *expense* be *minimized*.

4. Add *examination*, public examination by and before an appropriate qualification-judicatory (as per Ch. ix. Section 16, *Locable, who*;)—then and thereby would aptitude be maximized.

Instructional.

Art. 62. As to the expense, the less the expense to the public the less is the value of the correspondent *patronage* to individual rulers. So also the greater the aptitude requisite. Thus under a system of which the matter of *good* and of *reward*, in the shape of matter of *corruption*, is the *primum mobile*,—the greater the benefit to the public, the more determined is, of course, the opposition on the part of rulers.

Instructional.

Art. 63. In the nature of the case, no less applicable to military service than to non-military service is the *pecuniary-competition principle*, with a fixed salary as a basis for the biddings.‡ Principle, the *expense-minimizing*.

Instructional.

Art. 64. So not less to the rank of *privates*, than to the rank of *officers* in its several grades.

Instructional.

Art. 65. So not less in one than in another of the several *armature classes*, as per Section 1, *Branches, what*.

* In former days, an instance of this fell within the knowledge of the author of these pages.

† For a most instructive comparative view of French and English practice in this respect, see the speech of the French Minister *Hyde de Neuville* in the French Chamber of Deputies, as published in the French and English prints of the month of July 1828.

‡ Such has been the observation made by a distinguished English officer, possessing eminent means and opportunities of observance. Volunteer colonels, "serving without pay, have behaved as well as others."

Instructional.

ART. 66. So not less in the *sea*-service branch than in the land-service branch.

Instructional.

ART. 67. In every case, its being applicable with effect, will depend upon the *altitude* (so to speak) given to the above-mentioned basis: the *higher* the remuneration in all shapes taken together, the greater the extent to which, by biddings, whether in the *emptive* or the *reductive* form, (as per Ch. ix. MINISTERS COLLECTIVELY, Section 16, *Locable who*,) it will admit of being lowered.

Instructional.

ART. 68. So much for what is *capable* of being done: with what degree of preponderant *advantage*, is a question which will, at all times, be inviting the consideration of the Legislature. For elucidation, behold now what stands exemplified in established practice: in particular, in *English* practice.

Instructional.

ART. 69. Note, that on entrance into the service, (that is to say in the lowest grade,) promotion into the several superior grades, with whatsoever increase of remuneration it may happen to it to be attended in these grades respectively, will of course enter, and be seen to enter, into the account of the matter of remuneration, and thence into the account of the subject-matter of competition.

Instructional.

ART. 70. So likewise any title or titles of honour which, for extra-meritorious service, a man may have a chance to receive.

Instructional.

ART. 71. Note also, that in the rank of officer, several grades are in themselves so many titles of honour, rising one above another in the conjunct scales of power and factitious dignity.

Instructional. Ratiocinative.

ART. 72. On the other side stands the objection brought to view in Ch. ix. MINISTERS COLLECTIVELY, *Supplement to* Section 17, *Located how*, Art. 52 or 11, under the head of "*The unopulent excluded: thus equality violated.*" Applied, as there, to all other official situations belonging to the administrative department, the objection is, for the reasons there mentioned, stated as not presenting a title to prevalence. But admitting the conclusion to be *in that case* the proper one, it follows not that it must necessarily be so *in this* likewise: the danger from an *aristocracy* constituted by opulence, being so much greater in the military than in the non-military lines of service.

Instructional.

ART. 73. A middle course capable of being taken, is the making application of the pecuniary-competition principle, as to *one* part of the Defensive Force Establishment, and *not* as to another.

The demand for such a modification,—and the extent to which it might be advisable that it should be carried,—might in no inconsiderable degree depend upon the *extent* given in practice to the *voluntary-service* in the *Radical land*-service branch.

Instructional.

ART. 74. Note, that the only occasion on which, consistently with the principles respecting promotion (as per Section 6, *Promotion*,) application of this same pecuniary competition could be made,—is that of the *original* location: to wit, in the *lowest* of the *Erudite* grade.

SECTION XI.

Prize-money.

Instructional. Expositive.

ART. 1. In regard to prize-money, subjects of consideration for the Legislature will be the following:—

1. Subjects of capture, what.
2. Proportion, as between Government and the captors.
3. Proportion, as between rank and rank.
4. Proportion, as between armature class and armature class.
5. Proportion, as between army and navy, in a case in which both are employed in conjunction.
6. Proportion, as between one and another of the various co-operators, individually considered, on each individual occasion.

Instructional. Ratiocinative.

ART. 2. I. *Subjects of capture.* Principle applicable, the *individual-sparing principle.*

Rule. Exceptions excepted,—Confine the capture to such things as are in the hands of the *Government* of the hostile state. Reasons:

1. Value for value, the impression made on the enemy's strength by loss of a mass of property already in the hands of his Government is much greater than that made thereon by a loss to the same pecuniary amount, of a mass in the hands of individuals.

2. Of a given mass in the hands of individuals, it is no more than a *small proportion* that can be taken into the hands of Government, to be applied to the military, or any other branch of the public service.

3. Before it can have been extracted and brought into the form in which it is employed in war, and in the seat of war, some indefinite length of *time* must commonly have elapsed.

4. On the part of the enemy, military and non-military taken together, though the power of military aggression is so much more wea-

kened, the suffering is less. The suffering which the military classes endure, is what they are *prepared* for, as well as, by the pay received, compensated for. In the case of the non-military,—*preparation*, none; *compensation*, none.

5. On the part of the enemy the less the suffering is, the less violent is the exasperation, the less strenuous the disposition, the less strenuous the endeavour, to retaliate.

Instructional. Ratiocinative.

Art. 3. Exception may be—where a fortified place is to be taken by *assault*. Reasons:

1. Benefit to the *assailants*:—that without *extra-remuneration*, and that too derived from a source that is immediately in view, the soldiers in the attacking army will perhaps not be prevailed upon to expose themselves to the *extra danger*.

2. Benefit to the *assailees*, for minimizing the suffering:—that the existence of the acknowledged right, may induce them to come to terms before they are reduced to the uttermost extremity, and thereby prevent them from making a resistance which, on the average of cases, would be unavailing as to ultimate success, but which, in consequence of the irritation produced thereby, would almost certainly end in their private property being subjected to plunder, whether the right to plunder it were universally acknowledged and avowed, or not.

Instructional. Ratiocinative.

Art. 4. II. *Proportion, as between Government and the captors.*

Rule.—Maximize the Government's share; thence, of necessity, minimize the captor's share. Reasons:

1. So says the *expense-minimizing*, otherwise styled the *frugality-maximizing* principle.

2. True it is that, by the *remuneration-maximizing principle*,—were that in any case, general or individual, deemed necessary to be called in,—the whole would, at first view, be allotted to the captors, none to the Government. But, without reducing the quantum of the demand so far as to render the inducement afforded by it inadequate,—no small service might, by the reservation of a portion to Government, be rendered even to the captors. When abandoned to the cupidity of each individual, much of what might otherwise have been saved for all the individuals taken together, is destroyed; and in the shares of the profit derived from that which is not destroyed, great inequality will have place: while, in the case of a scramble, cupidity converts fellow-soldiers into mutually-conflicting adversaries. In the hands of Government,—the inequality might, and naturally would, be minimized; and the greater the service thus rendered, the greater the share which for this service the parties interested would be content to see retained.

Instructional. Ratiocinative.

Art. 5. III. *Proportion as between rank and rank.*

Directing principle,—the same as that which applies to remuneration in its regular and continuous shape: namely, the *inequality-minimizing* principle.

Instructional. Ratiocinative.

Art. 6. IV. *Proportion as between armature class and armature class.* If there be any ground for difference, it will be in favour of that class, to the apt exercise of whose functions the higher degree of *appropriate aptitude*, intellectual and active, is requisite; together with the greater *risk*, in so far as any determinate difference in this case can be ascertained. Note, that for the purpose of regular pay, the standard of reference will already have been settled. Principles—1. the *aptitude-maximizing;* 2. the *contentment-maximizing;* 3. the *inequality-minimizing.*

Instructional.

Art. 7. V. *Proportion as between army and navy service.* Standard, the same as between armature class and armature class in the army service, as above. The navy service being that in which the larger proportion of intellectual and active aptitude, in the shape of art and science, is requisite, and accordingly in the natural order of things, is actually exemplified.

Instructional.

Art. 8. Note, that, generally speaking, the navy can do better without the army, than the army without the navy. For without the aid of landsmen, seamen may act—and, in numerous instances, *have* acted on land: whereas, at sea landsmen never have acted, nor can ever be expected to act, without the aid of seamen. But in this or that individual case, it may happen that this general presumption may be found outweighed and overruled by the individual facts.

Instructional.

Art. 9. VI. On each individual occasion, *proportion as between one and another of the various co-operators.*

In so far as any sufficiently determinate distinction can have had place, and the existence of it have been proved by sufficient evidence—this may, with indisputable propriety, be taken for a subject of judicial examination. It ranks naturally under the head of extra-meritorious service: as to which see Section 10, *Remuneration.*

Instructional. Ratiocinative.

Art. 10. A question which, on this occasion, presents a demand for consideration, and, if possible, decision on the part of the Legislature, is—who shall be admitted as sharers, and in what proportion, as between the particular corps actually engaged in battle in the

service by which the prize-money was produced, on the one part—and, on the other part, the whole, or this or that other portion of the army, by whose movements or position, contribution in greater or less amount may have been made to the success.

1. In so far as in any degree any such contribution has been made—some share it should seem should be allotted to the bodies and the individuals respectively thus contributing. If in any instance the factitious motive in question is necessary, so is it in every other.

2. At the same time by those by whom none of the hardships or perils were shared, the share received of the reward should not (it should seem) be so great as the share of those by whom the whole burthen of evil—actual hardship and danger together—has been borne. In default of special reasons indicative of a different proportion—say for example, share of the *non-engaged*, *half* that of the *actually engaged*.

Instructional. Ratiocinative.

ART. 11. Care will be to be taken that, on the occasion and for the purpose of reward,—in so far as a clear line of distinction can be drawn, in such sort that the matter of fact be not open to dispute, nor the decision accordingly open to the imputation of injustice,—the service rendered by each particular corps, or even individual, be kept as distinct as may be from that rendered by every other. For as every distinguished exertion requires for the production of it a separate motive—the more exclusively dependent on each occasion the receipt of the reward is seen to be on the exertion made for the obtainment of it, the greater will be the efficient force of the reward, in the production of the exertion, and thereby of the service: the less exclusively dependent, the less the efficient force; so, consequently the less numerous and less strenuous the aggregate of the exertions on each such occasion made.

Suppose, on the other hand, the aggregate of the prize-money earned by the aggregate of all the armies of the State, to be lodged in an aggregate fund, and of the matter of that same fund, periodical—say, for example, annual—distribution to be made; one consequence is, that the quantity of money thus earned in both cases being supposed the same, the more numerous the army the less strong and effective will be the operation of the mass of reward towards the production of the desired effect. If it be too much to say, that in this case the prospect of a share in this same aggregate fund would, in the breast of each individual, be altogether without effect,—scarcely can it be too much to say, that *half* the money thus employed would, if employed upon the individually-applying plan, operate with greater effect than the *whole* of it if employed in the lumping plan, as above.

Instructional.

ART. 12. With particular attention the Legislature will, on this occasion, keep in mind the consideration—in how great a degree the effective force of the reward cannot but depend upon *promptitude* in respect of the *receipt* of it—or in how great a degree by delay—especially by delay seen or suspected to be needless,—the effective value of it cannot but be diminished.*

SECTION XII.

Power of Military as to Non-Military.

Instructional. Expositive.

ART. 1. Correspondent and equivalent to

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* On both these subjects useful information may be derived from English practice, as stated in the *Morning Chronicle* of 5th February 1825, in the case of the prize-money earned in British India, anno 1818 or thereabouts, in the war carried on under the Governor-generalship and Commandership-in-chief of *Marquess Hastings*.

By an English statute, 6 Anne c. 13, anno 1707, followed by a multitude of others,—the proceeds of prizes taken in the sea service by Government ships are, with wasteful heedlessness (the war was then at its height) given in the lump to the captors.

This not being deemed to extend to wars carried on in Hindostan in the name and under the immediate authority of the East India Company,—"The Crown" (it is stated in speaking of the war antecedent to the above-mentioned year 1818) "had made a grant to the East India Company of the whole of the booty—one half for their own use, to defray the expense of carrying on the war, the other half for distribution among the troops."—"Had a similar grant been made on the present occasion, we venture to assert" (continues the article) "that the prizes taken in 1818 would long since have been distributed."

What the article has for its object is plainly enough the exculpation of the Directors; and from their authority it wears the appearance of having emanated.

"The Court of Directors" (says an anterior paragraph) "lost no time in submitting the question to the Lords of the Treasury: but, *in consequence of the legal impediments thrown in the way by the advisers of the respective parties to the appeal*, their Lordships did not arrive at a decision on the point, although submitted to them in March 1819, until March 1823. It is known that the decision was in favour of the *actual captors*." Thus far the newspaper article. As to the reasonableness of the *decision*, see the consideration alleged in behalf of it in the text. As to the delay—for anything that appears, the fault lay—not in the judges, as above, but in the system under which they had to act.

Thus it is that, under technical procedure, and the judicial establishment to which it owes its birth,—in whatsoever part of the field of business, social, political or even military, the man of law sets his foot,—obstruction and evil in all shapes spring up, in vast crops, under it. Think of these men, sitting in comfort and security, and in their manufactory of factitious delay, grinding away the value of those rewards, on the efficiency of which the service, such as it is, cannot but, in so high a degree be on all occasions dependent for its success.

this title is that of *military necessity*. Understand by *military necessity*, the necessity of giving by law to military functionaries authority to produce, on each occasion, in any shape whatsoever, whatsoever evil may be at the same time sufficient and *necessary* to the exclusion of greater evil. Remoteness and uncertainty taken into account, say for perfect correctness, evil superior *in value*. Principle, the *Preponderant-evil-excluding*.

In the Penal Code *military necessity* will constitute one of the grounds of *justification*. Its applicability is more extensive than that of any other of them. Of the openly committed offences against person and property, few there are to which it is not applicable.

Instructional.

Art. 2. As to the *efficient cause* of the necessity—in the most comprehensive description that can be given of it, it will consist in the need of contribution in any shape, to the supply in every shape, which happens to have been provided for the purpose of national defence; and note that, 1. for the purpose of national *defence*, it may at any time happen that operations of an *offensive* nature may be necessary; 2. to both defensive and offensive operations the matter of *subsistence* for all persons engaged in or for those same operations, is at all times necessary.

Instructional. Ratiocinative.

Art. 3. As to the need of making provision for obviating this necessity, and the nature of the appropriate powers by the establishment of which the provision must be made, they will be seen to be as follows:—

By the general arrangements made by the law, whatsoever is a man's *own*, (his person as well as his property included,) other persons in general stand inhibited from meddling with; for without such inhibition nothing can be caused to be any man's *own*. By and in proportion to the extent of the appropriate powers necessary, this inhibition is taken off, and allowance, with or without the addition of the *obligation* of employing it, is substituted. On this occasion the supposition and assumption is—that, on the occasion in question, from the non-establishment of these powers, evil to a greater amount (*propinquity* and *certainty* taken into the account) may at any time come to be produced, than by the establishment of them. Accordingly, no political community has ever existed, or is likely to exist, in which when need has been thought to have place, exercise has not, in fact, been given to these powers. But, in general, it is in *violation* of acknowledged law that the operations in question have been performed: what is here proposed is—that still, as often as the need has place, they should be performed, but that the performance should be, not in *violation* of, but *according to*, and *under the authority of* the law.

Instructional.

Art. 4. For modified authorization instead of prohibition, reason this. By issuing prohibitions which, in the nature of the case, cannot be enforced, the Legislator gains nothing, and loses much. That which you prohibit, you cannot regulate. That which you leave unprohibited, you may, in cases to no inconsiderable extent, regulate to advantage; at any rate, you leave yourself free to regulate.

Ratiocinative.

Art. 5. To a man who, with arms in his hands, and food within his reach, is on the point of starving—in vain would you say—"meddle not with what you see: be still, and starve on till you die;" if he obeys, death is present and certain: if he disobeys, death is but contingent, and, at any rate, comparatively remote.

Instructional.

Art. 6. For such regulations as the nature of the case allows to be established, with a view to the states of things and occasions belonging to this head, appropriate *purposes* are the following:

1. Minimization of the evil, in all shapes, producible by the exercise of the powers on these occasions established.

2. Providing compensation to individuals, in so far as they have been sufferers by the exercise of it, and by the evil, or say the *damage* produced in consequence.

3. Facilitating the application of appropriate punishment, so far as necessary to the repression of such abuse as is liable to be made of the power established: *abuse*—that is to say, by the production of *evil*, in any detrimental shape, over and above what is necessary. This evil, necessary and unnecessary together, will stand designated by the name of offences, one or more, comprised and defined in and by the *Penal Code*.

Instructional.

Art. 7. As to *the means of accomplishment* with relation to these same purposes,—such means as the nature of the case admits of, are reducible, all of them to this one expression: to wit, *publicity: publicity*, effected by appropriate *notification:* notification made, 1. of the *evil*, on the occasion in question, produced: 2. *by* the proper persons: 3. *to* the proper persons: 4. *at* the proper portion of relative *time*.

Instructional.

Art. 8. Proper persons for the notification to be made *by*—are the persons by, or by whose orders, the evil has been produced.

Proper persons for the notification to be made *to*—are such persons, by whom, for the purpose of *compensation* to be made for the evil, it is necessary that the particulars of it, and the amount of it, should be known—*in time*.

Proper portion of relative *time*,—is the portion of time during which the evidence by which indication of the evil is afforded, may be elicited, with least danger of its being altogether extinct, or rendered more or less obscure and inconclusive, *by length of time:* that is to say, *at* points of time, and *within* portions of time, as near as may be to those in which the evils produced by the exercise of the power have taken place, or been seen to be about to take place.

Instructional. Ratiocinative.

ART. 9. As to the minimization of the evil. Whatsoever evil you allow a man to produce, —the production of it being at the same time not discreditable to him, nor inhibited by the popular, or say moral, any more than by the legal sanction,—he will have no *repugnance* to your knowing of it: in this case, of any *repugnance* which it can happen to him to feel, and have to get the better of, the only possible objects are—1. exclusion put upon any additional *evil*, which, for his own particular purposes, he feels inclined to produce: 2. any such *trouble* as it may have been rendered necessary for him to take, for the purpose of *causing* it to be *known* what the evil is which, the production of it being allowed to him, he has produced accordingly.

Instructional. Ratiocinative.

ART. 10. If you *prohibit* the production of the supposed necessary evil,—the prohibition will include in it the effect of an order for *concealment:* and, under favour of this concealment, the supposed agent stands exposed by you to the temptation of producing, over and above the evil necessary to the exclusion of the supposed greater evil, evil in whatsoever shape and quantity may afford a present gratification in any manner to himself. If, for the preservation of his life, you allow him, wheresoever he finds them, to take *necessaries*, but not, unless in so far as the necessaries may be insufficient, *dainties*,—he *may*, and if notification is to a certain degree probable, commonly *will*, spare the dainties; but if you inhibit him from both, he will take not only necessaries but dainties, and perhaps slaughter the family to prevent their telling tales.

Instructional. Expositive.

ART. 11. *Subject-matters, over* or *in relation* to which it may be necessary that, on the sort of *occasion* in question, for a *purpose* such as that in question, *power* shall be exercised,—may be thus distinguished:

1. Things, considered simply.
2. Persons, considered simply.
3. Persons, considered in relation to things.

Instructional.

ART. 12. I. *Things*, considered *simply*. These things will be either—1. Things the use of which is subservient to *warfare;* or 2. Things composing the matter of *subsistence*. In both cases, instruments of conveyance and communication with reference to these same things, and thence the powers in question exercisable over things applicable to these purposes, may also be necessary.

Exemplificational.

ART. 13. Of a case, in which, for the purpose of *subsistence*, need of a power of *prehension* and *consumption*, applied to this or that portion of the *matter of subsistence*, may have place,—an example is the following: Soldiers, one or more on a march — that part of the country thinly inhabited; provisions, in sufficient quantity, not taken with them, or not remaining with them. Money, none sufficient for purchase; or, though sufficient, no adequate supply obtainable in exchange for it; cause of the impracticability, absence or hostile affection on the part of the inhabitants.

Instructional. Exemplificational.

ART. 14. II. *Persons*, considered *simply*. From persons not military, the services which there may be occasion to exact, may, in their nature and character, be either: 1. military, or 2. non-military.

Exaction of services of a military nature is, for the time that the course of operation lasts, *compulsory enlistment;* enlistment, for a *time* corresponding in duration to the emergency. As to this, see Section 5, *Term and Conditions of Service.*

A town, for example, is in a state of siege. For contribution to defence, the commanding officer causes hands to be laid on persons not military, in such numbers as to him appear necessary, and compels them to join in the labours and perils of the military functionaries. For and during the appointed time,—these persons are thus aggregated to the number of actually-serving functionaries.

Instructional. Exemplificational.

ART. 15. Of services which, not being of a military nature, there may be occasion to exact for military purposes, examples are the following:

1. Going on messages.
2. Furnishing information.

Instructional.

ART. 16. When for any such occasional and temporary purpose, a non-military person is pressed into military service, it will be for the care of the Legislature—and of the several administrative functionaries, non-professional, and professional in their several grades,—to allow to the person so impressed, in so far as the nature of the case admits, the benefit of the arrangements made, in that view, in the *enlistment contract:* and to furnish him accordingly with an exemplar thereof, and of the *Soldier's Code*, as per Section 5, *Term and Conditions of Service:* and, in particular, those

which regard *Smart-money*, as per Section 10, *Remuneration*.

Instructional.

Art. 17. III. Persons considered in relation to *things*. Of services, military and non-military, employed by persons on occasions of this sort, in relation to *things*,—examples are as follows:

I. Things *immoveable*—1. Assisting in the fortification or dismantling of a *post*. 2. Assisting in the fortification, construction, repairs, destruction, or endamagement, of a *bridge*, or other instrument of communication.

II. Things *moveable*—1. Assisting in the conveyance of military *stores* and *provisions* of all sorts for *use* or *safe custody*. 2. Assisting in destroying or endamaging them, to prevent them from falling in a serviceable state into the hands of an enemy.

Instructional.

Art. 18. When, by a military functionary or set of functionaries, on the ground of real or supposed military necessity, power is exercised,—it is exercised either without order of superordinates, or under and by virtue of such order.

Instructional. Enactive.

Case I. Power exercisable *without* order.

Sole case for trespass, as above, through military necessity, without order,—self-preservation: preservation of life from deperition for want of necessaries. In relation to this matter, much will depend upon the state of the country in respect of population and cultivation at the time. But in general, the existence of any such necessity will be confined to *war time:* as to which, see below, Art. 45.

Instructional. Exemplificational. Expositive.

Art. 19. To this head belong, in the English land-service, the practices authorized by law, and termed *quartering* and *billetting*. In England, population is so uniformly dense, that the houses of entertainment, known by the general denomination of *public houses*, are everywhere in extent and number sufficient for this purpose: and, to the obligation, the benefit of which extends alike to all classes (namely the obligation of furnishing the matter of food, drink, and lodging at the ordinary prices) is added, in the case of the particular class here in question, the obligation of furnishing lodging, and some few articles of small value, *gratis*. An order, by which, in favour of the individual functionaries in question, the house chosen for this purpose is required to furnish the supply in question, is called an order for *quartering;* and when expressed in and by an appropriate written instrument, an order for *billetting*.

Instructional.

Art. 20. Case II. Power exercisable *by* order. In accordance with the circumstances of *place* and *time*, to the Legislature it will belong to determine—1. the *purpose* for which; 2. the *occasions* on which; 3. the *powers*, which shall be exercisable; 4. *by* what persons; 5. *on* what *persons;* and 6. on and in relation to what *things*.

Instructional. Expositive.

Art. 21. *Purpose*—general description of it, on every *occasion*, the same: that is to say, defence of the territory of the state against hostile aggression: whether from *without* or from *within*. On each occasion, *supply*—1. of whatsoever *persons*, whatsoever *services* may, on that same occasion, be at once needful,—and, with least balance on the side of evil, applicable, and accordingly applied, to that same general purpose; 2. of whatsoever *things*, according to their several natures, the *use* may be needful; 3. Of *powers*, and accordingly *acts*, allowed to be exercised in the application so made of such *services* and such *things*,—*of* whatsoever *persons*, military functionaries included, whatsoever *acts* may, with least evil, be in the highest degree conducive to the fulfilment of that same purpose. In this case, as in that of an exercise given to a correspondent judicial authority, *prehension* will be the general name employed in designating the *physical* act by which commencement is given to the course of operations necessary to the extraction of the *service*, or the derivation of the *use: prehensor*, the functionary considered as so occupied. On the part of the *operations* in question, degree of *promptitude* needful,—such as will not admit of application to the Judiciary *functionary* for his sanction.

Instructional. Expositive.

Art. 22. In relation to *orders* for the general purpose here in question, and the functionaries *by whom*, on the several *occasions*, for the several particular *purposes*, they may be issued, —the Legislature will distinguish—1. the *general* and most extensive order; 2. and, if such there be, the *immediate* order or orders; understanding by an *immediate order*, that which is to be immediately followed by physical execution, to wit, *by prehension*, and the operations which follow it, as per Art. 21.

Circumstances of *place* and *time* always taken into account,—the Legislature will accordingly determine and ordain,—what *orders*, for the *purpose* in question, may, on any and what *occasions*, be issued and carried into effect, that is to say—without waiting for authorization from the *Army Minister* or *Navy Minister* as the case may be, or the *Prime Minister*.

Instructional.

Art. 23. From the Legislature itself will emanate such orders, as, in respect of *place*, *time*, and *occasion*, are most *comprehensive*. Compared with orders emanating from functionaries belonging to the appropriate department and sub-department of the Executive authority,

those emanating from the universally-superintending authority of the Legislature have the *advantage*, in respect of *time* for collection and consideration of appropriate *grounds* for arrangement: they lie under a *disadvantage*, in respect of perception of *individual* occurrences from which, at the individual places and times in question, it may happen to the demand for arrangement to receive *modification*.

Instructional.

ART. 24. A distinction by which the nature of the demand for regulation at the hands of the Legislature cannot fail to be modified, is that which exists between time of full peace, and time of war, whether actual, or but impending. As to this matter, see below, Art. 45.

Instructional.

ART. 25. On the issuing of any order for the prehension and forced *employment* of persons, or for prehension and forced employment, or destruction, or endamagement of serviceable *things*, as per Art. 11 to 17, antagonizing *cautions* that will require to be kept in mind are these:

1. By the terms of the order, take care to allow such latitude as may be sufficient to leave it in the power of the subordinate, by appropriate forbearance, to minimize the quantity of the evil produced by the execution given to that same order,

2. Be aware of the danger, lest, under the cover of such latitude, on the occasion of the execution given to such order,—whether through sympathy or self-regarding interest,—undue *favour* or *disfavour* be shown to an individual, at whosesoever charge; whether that of an individual, or that of the public service.

3. By the arrangements for the maximizing of appropriate notification, will be done what is capable of being done by law, towards the exclusion of these evils: and, in the tenor of the instructions, reference to these arrangements will give each subordinate to understand, that all complaints of contravention will find adequately open to them the eyes and ears of all those to whom it belongs to give redress.

Instructional.

ART. 26. Unless, for any purpose, on the part of an intermediate functionary to whom an order is issued, co-operation, by applying modifications to the order, be deemed necessary,—the superordinate, in such his order, will, in proportion as success depends upon promptitude, be careful not to cause needless consumption of time, by causing the order to pass through the accustomed channels, when, in less time, immediate communication can be made of it to the functionary by whose immediate agency execution and effect are to be given to it: care being however taken, at the same time, to send examplars of the order to the several intermediate authorities, in whose instance acquaintance with the matter of it may be requisite.

Instructional.

ART. 27. Of the existence of the several extensively manifested, and extensively influential *facts*, by which, in the mind of the Legislature or the Prime Minister, the demand for extraordinary powers of the sort in question has been constituted, it will be for those authorities respectively to have satisfied themselves by appropriate evidence.

Instructional.

ART. 28. But should any instance occur in which, in consequence of information not capable of being transmitted, or not actually transmitted, to these same superior authorities, it should, by any military commander on the spot, be deemed necessary to give exercise to such powers—two distinct sets of facts which for the justification of such exercise will be necessary to be proved, are the following:—

1. The individual facts, by the aggregate of which, the *necessity* is regarded as being constituted.

2. The facts expressive of the *damage* sustained, or about to be sustained, by the several *individuals* whose *persons* or *things*, or both, it has been deemed necessary to subject to the powers in question, and which have accordingly been so subjected.

Instructional.

ART. 29. For this latter purpose, three distinguishable operations will, on each occasion, require to be performed, by the military functionary, in pursuance of whose *orders*, and under whose *inspection*, the damage is produced. These operations are—

1. Not merely permitting,—but, by appropriate invitation procuring, or endeavouring to procure,—in as great number as may be, without mutual obstruction, or preponderant evil in some other specific shape,—persons in the highest degree competent to perform the functions of *percipient witnesses*.

2. Maximizing, in the instance of each, the facility given to him for clear, correct, and adequately comprehensive *observation*: viz. as to the *subject-matters* themselves, and their *respective values*.

3. Giving whatsoever degree of clearness, correctness, and comprehensiveness the circumstances of the individual case admit of, to the several operations of *minutation* and *recordation*; as to which, see Ch. viii. Section 10, *Registration, &c.*: Section 11, *Publication, &c.*: Ch. xii. Section 14, *Publicity, &c.*: Ch. xxi. JUDICIARY REGISTRARS, &c. Section 5. *Minutation, how.*

Enactive. Instructional.

ART. 30. Now as to *compensation* for damage, in whatever shape produced, at the expense of a non-military person, by exercise

given to power on the ground of military necessity,—*compensation* will, as soon as without preponderant evil may be, be administered. Compensation,—at the charge of the public in every case, in the *first* instance: in case of *abuse*, and to the amount of the abuse, at the charge of all such functionaries as have had part in the abuse, allowance being at the same time made for their state of subjection, on behalf of all such as, on the occasion of such abuse, shall, by the irresistible force of military command, have been rendered instrumental in the production of the abuse. This charge will constitute part and parcel of the *public debt*. Principles—1. the *contentment-maximizing;* 2. the *inequality-minimizing*.

Instructional.

Art. 31. In the account of damage, will, in every case, be included—not only that which is *direct*, but that which is *consequential:* for example, not only the loss of the value of a thing taken or destroyed, but any loss incurred for want of the use which would otherwise have been made of it, on this or that individual occasion, for this or that individual purpose. For what, on this as on other occasions, is to be deemed *consequential damage*, —see the *Penal Code*.

Exemplificational.

Art. 32. Example. Thing prehended (suppose) a navigable vessel; loaded, and on the point of starting: the *vessel* taken for public service; the *lading, not*. Included in the account will in this case be—the diminution of *profit*, or the production of positive *loss*, by *frustration* or *delay* of the *voyage:* at any rate, the cost of *unshipping* the lading, and *reshipping* it.

Instructional.

Art. 33. On this occasion, the Judge will be on his guard against taking for facts proved, any alleged probabilities, brought to view by imagination, inflamed by pecuniary interest: as if, for example, were brought to account not only the profit that would have been made upon *that* cargo, but the profit that might have been made by the investment of that profit in the purchase of a fresh cargo, and so on. Of the first cargo, the profit might be susceptible of proof: namely, from the profit actually made on goods of the same kind sold, about the *time* in question, at the *place* of destination; *not* so, any such profit of the *second order*, as above.

Instructional.

Art. 34. On the military functionary by whom the order is issued, and the military functionary by whom or under whose orders the damage is produced, respectively—it will be incumbent—not only so, as above, to cause *perception* and *recordation* to be made of the damage, while it is *causing* and *after* it has been caused;—but moreover, whensoever and in proportion as the nature of the exigency will permit, to cause previous *estimates* to be taken, to wit, by appropriate *perception, calculation, minutation*, and *recordation*.

Instructional.

Art. 35. Of the *evidence* so recorded, and of the *estimates* so made, as per Art. 34, exemplars will be distributed, in this case, as in the several cases in which, throughout the course of this Code, distribution of such exemplars is ordered. In particular, for example:

1. To the party by whom, in each case, the damage is sustained, one.

2. To the military officer by whom or under whose order it has been caused, one.

3. To the next superior military officer, under and in pursuance of whose orders it has been caused, one.

4. So upwards, to the several superordinate authorities.

Instructional.

Art. 36. Against abuse, in the two opposite shapes of which it is alike susceptible, the Legislature, and the several subordinate authorities, in their several fields of service, and in particular the Finance Minister,—will, on this occasion, be respectively on their guard. These shapes are—

I. To the detriment of the individual.

1. Causation of damage *beyond the extent* of the necessity.

2. *Undervaluation* of the damage so caused.

II. To the detriment of the public, in favour of the individual.

1. In the causation of the damage, *stopping short* of the extent of the necessity.

2. *Overvaluation* of the damage so caused.

III. To the detriment of either party, or both, as it may happen.

1. *Omission* in not causing to be made the previous *estimate*, in a case in which the nature of the exigency admitted of its being made.

Instructional.

Art. 37. Of persons to whom, on any such occasion, it may happen to be competent to officiate, with or without such invitation, as above, in the character of *percipient witnesses* and *registering functionaries* respectively, examples are the following:—

1. A *Judge* or *Judge Depute* (as per Ch. xiv.) of the subdistrict, if near enough to the spot.

2. The *Local Headman* (as per Ch. xxv.) of the bis-subdistrict, or any person or persons by him deputed for the purpose.

3. The Local Registrar, or say Headman's Registrar (as per Ch. xxvi.) of the bis-subdistrict, or any person by him deputed for the purpose.

4. Any person or persons officiating on the spot, in subordination to the *Preventive-Service Minister;* as per Ch. xi. Ministers severally, Section 5, *Preventive-Service Minister*.

5. Any person or persons officiating on the spot, in subordination to the *Interior-Communication Minister;* as per Ch. xi. MINISTERS SEVERALLY, Section 6, *Interior-Communication Minister.*

6. Any person or persons officiating on the spot, in subordination to the *Indigence-Relief Minister;* as per Ch. xi. MINISTERS SEVERALLY, Section 7, *Indigence-Relief Minister.*

7. Any person or persons officiating on the spot, in subordination to the *Education Minister;* as per Ch. xi. MINISTERS SEVERALLY, Section 8, *Education Minister.*

8. Any person or persons officiating on the spot, in subordination to the *Domain Minister;* as per Ch. xi. MINISTERS SEVERALLY, Section 9, *Domain Minister.*

9. Any person or persons officiating on the spot, in subordination to the *Health Minister;* as per Ch. xi. MINISTERS SEVERALLY, Section 10, *Health Minister.*

10. Any person or persons officiating on the spot, in the capacity of a functionary under the orders of the *sublegislature* of the district; as per Ch. xxix. SUBLEGISLATURES, and Ch. xxx. SUBLEGISLATION MINISTERS, the functions of any of the several sorts of official situations herein mentioned by Numbers from 4 to 9 inclusive.

Instructional. Expositive.

ART. 38. *Abuse* of prehensive power, employed, as above, on the occasion or pretence of military necessity,—what? In this case, the *act* by which the wrong is done, will be of the number of those acts on which, under the head of *Offences against individuals,* inhibitions are put in and by the *Penal Code.*

Instructional.

ART. 39. *Punishment* for such abuse. In the case in question, the act being, by the supposition, unjustifiable, will, in and by this Code, have been subjected to its appropriate punishment; including the burthen of making satisfaction in the shape of compensation, and any other appropriate shape: burthen of satisfaction being, as far as it goes, placed to the account of punishment, and capable of being of itself sufficient for that purpose.

Instructional.

ART. 40. On the score of abuse of power,—application of *punishment,* in addition to the imposition of the burthen of *satisfaction,* supposes *evil consciousness* on the part of him by whom the abuse is effected. Of such consciousness, presumptive circumstantial evidence may be afforded—not only by positive agency employed in effecting, or endeavouring to effect, the suppression of appropriate evidence, in relation to the exercise given to the power, —but even by *reluctance* or *backwardness* as to the *exhibition* or *procurement* of such evidence. Of sincerity, on the other hand, the *degree* of *positive* exertion employed in the endeavour to render the body of appropriate evidence as clear, correct, and complete as possible, will in each case operate as a *proof* and *test.*

Enactive.

ART. 41. As to *Procedure:* for obtaining compensation at the charge of the public, the mode of *procedure* will be as follows:

1. The party by whom the damage is alleged to have been sustained, will make application to the Judge, in this case as in any other case in which, at the charge of the *public,* a *judicial demand* is made.

2. Of the service of the *Eleemosynary Advocates,* as per Ch. xx. if his circumstances render them needful to him, such demandant will have the benefit.

3. On behalf of the *public,* the Government Advocate, as per Ch. xviii. will either give his consent, or make any such opposition as, in his view, justice shall require.

Enactive.

ART. 42. For *abuse* of power to the prejudice of an *individual,*—the individual himself, or the Government Advocate for the public, or both in conjunction, may pursue.

Enactive.

ART. 43. For abuse of power to the prejudice of the *public alone,* the Government Advocate alone will pursue: but moreover, by any person who is so minded, *information* may be given to the Judge, as per *Procedure Code,* Ch. viii. JUDICIAL APPLICATION.

Instructional.

ART. 44. In this case, as in all others, on the part of the military functionary as above, the offence, whosoever be the party wronged by it, (that is to say, whether one individual or individuals assignable, or a particular class, or the public at large,) may have had for its accompaniment either *evil consciousness* as above, or *culpable inattention:* and in respect of punishment and satisfaction respectively, the offender will be dealt with accordingly. See *Penal Code,* head of REMEDIES.

Instructional.

ART. 45. The country in a state of peace—or the country in a state of war. From this distinction will result the corresponding parts, or say divisions, in the Military Code: say the *Peace Code* and the *War Code.* See Section 5, *Term and Conditions of Service.*

In the *Peace Code* will be contained the enactments by which are created and conferred the powers exercisable by military functionaries in relation to *non-military* persons, as well in time of peace as in time of war: in the War Code, those the need of which is regarded as not having place in any other time than a time of war: of war, actual or regarded as impending.

In the time of peace, the applicability of the

part which regards war alone, will remain suspended. It may however remain in the Code, in readiness to be revived; revived, either unaltered, or with any such alteration as the exigencies of the moment may happen to have suggested.

Instructional.

Art. 46. If, (as per Ch. vi. Legislature, Section 18, *Attendance*,) the sittings of the Legislature are, at all times, *undiscontinued*,—adjournments made, no other than from day to day;—and if, at the same time, the *residence* of the *Prime Minister* is at his office, in the near vicinity of the Legislation Chamber;—no reason seems assignable, why a determination of such prime importance as the revival of this same War Code, should be in hands other than those of the *Legislature*. Circumstances of place and time considered, it will be for the Legislature to determine whether—in consideration of the distance from the seat of supreme power and the possible urgency of the case—the power shall be imparted, to any or what commanding functionary or functionaries, in any or what distant districts.

Instructional.

Art. 47. Between the arrangements sufficient in the one case, and the arrangements necessary in the other case, the difference will turn principally upon two points: 1. the *extent* of the extraordinary *power* given, as above, to the class of functionaries in question: 2. the *extent* and *burthensomeness* of the *obligations* to which, for securing on their parts the due exercise of their several functions to the advantage of the service, it is necessary they should be subjected.

Instructional.

Art. 48. Of the difference requisite as to the *extent* of the *powers* in question, an example may be afforded—by the case, as per Art. 13, where, for the justification of the exercise of these powers by the military functionaries in question, appropriate previous orders will *not* have been rendered necessary, compared with the opposite case. In so far as necessary for securing a functionary of this class from perishing by want, the requisite provision must be in force at all times; in the one state of things, as well as in the other. But as to those powers, exercise to which need not, and thence ought not, to be given, but by and in consequence of appropriate *orders*,—no otherwise than by *war*, actual or impending, can the need of them (it will be seen) be created.

Instructional.

Art. 49. Of the difference required as to the burthensomeness of the obligations necessary to be imposed, constantly or eventually, on these same functionaries, an example may be afforded by the case of *capital*, or rather say *mortal* punishment. In time of war, in the presence, or in the immediate expectation of the presence, of an enemy,—for securing appropriate operation in preference to flight, nothing less than fear of death can, on the part of men in general, be sufficient. If in separate flight and desertion a man saw a probability of escaping from impending death at the hands of the enemy—men, in unlimited numbers, might naturally be disposed so to do; whereas, in so far as, by so doing, they behold awaiting them a certain death no less probable at the hands of their own superordinates,—in this case, and by a prospect to this effect, this disposition, so pregnant with danger of all imaginable evils to the whole community, will naturally be surmounted: at any rate the disorder will thus receive the benefit of the most effectual remedy which the nature of the case admits of. But it follows not that because this remedy is thus necessary in time of war, it should in an equal degree, or in any degree, be necessary in time of peace.

And with a view to the quantity and quality of punishment necessary for military offences generally, the Legislature will see the expediency of making application of this same ground for alleviation, throughout the whole mass of penal arrangements. Principles—1. the *Contentment-maximizing*; 2. the *Expense-minimizing*.

Instructional. Exemplificational.

Art. 50. Under *matchless constitution*, arbitrary power being of course dear to both sides, the established practice is—not to establish by law the necessary powers, but to leave the powers to be exercised by *practice*:—by practice *avowedly contrary to law*: whereupon for wrong done, in all shapes, under assurance of impunity,—comes, in due season, an *Indemnity Act*. Alike obvious and incontestable is the convenience of this course. Had the powers been demanded of the Legislature, adequate *grounds* for the demand would have been looked for, and any that were produced as such would have been liable to be canvassed: and though, being made by ministers, the demand would of course have been complied with,—no instance of non-compliance being to be found elsewhere than in imagination,—still, *reason* (suppose) being clearly against compliance,—eyes, in some small number might, on each occasion, be opened; and the substitution of a form of Government having for its object the *augmentation*, to one having for its object the *diminution* of the aggregate of happiness—be proportionably promoted. As it is—under the assurance of the subsequent indemnification,—*abuse*, in all possible shapes, is of course practised: power exercised, where there is no need of any at all: and where, of a power, to this or that effect, a real need has place,—along with those operations which are needful and contribute to the desirable effect, others are performed which contribute to that effect nothing,—but to the effect of depredation, or op-

pression, or both, whatsoever may be desired by the operators.

Instructional. Exemplificational.

ART. 51. Thus, if by flogging or otherwise, it happens to be your wish to keep men in a state of torture till they give any such information as it may happen to you to wish for,—or till they say anything else you wish them to say,—do you apply to Parliament for power so to do? Not you, indeed; you know better things. You cause torture to be applied to them, as much as it is agreeable to you to see applied. This done, some months afterwards you state to Parliament, for its information, that extraordinary disorders require extraordinary remedies. The bill passes, and "everything is as it should be:" be it ever so bad, what has been done cannot be caused not to have been done; and by so perfectly unanswerable an argument, the satisfaction produced in the mind of every admirer of *matchless constitution*, is entire. On goes thus, at all times, the commodious *repetend*, composed of *criminality* and *indemnity:* criminality each time by wholesale; indemnity each time foreknown to a certainty—through any number of generations, till the matchless mass is dissolved in its own rottenness.

Instructional.

ART. 52. Under *other* constitutions, the object of *law* is, to secure *obedience* to itself: under *matchless constitution*, to secure *disobedience* to itself. Under such law, whatsoever may be the *opinion* as to security, security *itself* is an empty name; empty and useless—to all but those who make the law, and those who are partakers in the sinister interest, by the force of which it is made.*

Instructional.

ART. 53. On this, as on all other occasions, the Legislator whose all-comprehensive ruling principle is the *greatest-happiness principle*, looks out, with anxious industry, for the problems of the greatest difficulty, to the end that such solution as the nature of things admits of may be applied. The *fee-fed Judge*,—who, by every instance of evil prevented by timely legislation regards himself as robbed—beholds in every such difficulty, with hope and delight, a source of *fees*. Among Legislators the man in *authority* beholds in every such difficulty, unnoticed and unremoved, a source of safe depredation or oppression, exercisable by himself: the man in *opposition*, an instrument of warfare, a source of accusation against his more fortunate antagonist: of accusation, on the ground of whatsoever, under the difficulty, happens in a case of *necessity* to have been done: done—whether *beyond* the necessity, or in ever so strict conformity to it.

The evil, which an oppositionist denounces as such, he of course wishes it to be inferred and supposed, that, were he in power, he would cure. *Natural* enough the conclusion is; but far indeed from being a *necessary* one. If, according to his own estimate, it were his interest to cure it, cure it he would: otherwise, not.

Be the evil, be the abuse, what it may—be the accused who they may—whether it shall have *him* for defender or assailant, depends on fortune: it depends on the side on which fortune has stationed him at the time.†

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* In a case known to the author of these pages,—a leading member of administration, not only by tampering with Judges engaged them to break a law—thus exercising what *James the Second* was dethroned for, a *dispensing power*,—but even scrupled not to avow it in writing, to a person of opposite political principles, who was not known to him even by sight. And this violation of law—what was it for? Only to save the trouble of producing by law, an effect unquestionably innoxious and salutary, which, after all—this same illegal course having been employed and persevered in—failed of being produced.

Desired on one part, secrecy was not in this case promised on the other. But, as no good in any shape would be done by the disclosure,—and punishment, more or less, would be sure to fall on the informer—none whatever on the criminal,—no disclosure will be made.

As for *punishment*, a man would not be able to hold up his head for shame,—if, while in Honourable House lauding *matchless constitution* for the information of the lower orders, he were thought to be simple enough, in the teeth of never varied experience, to entertain in reality any such notion as that, under that same constitution, punishment in any shape, could by any possibility alight on any man, in a situation of a certain height, for anything which in that situation he has done: on any *Minister* for anything he has done as Minister: on any *Governor*, for anything he has done as Governor: on any *Judge*, for anything he has done as Judge.

† "It is but forty days' tyranny at the worst," observed one day in the English *House of Lords*, the *Law*-Lord *Camden*, to whose purpose (his party, the Whigs, being then in power) it was more suitable that an act of *necessary* power should be exercised *against* law than *under* the law. The tyranny was that of suspending, by an exercise of illegally-dispensing power, the execution of a *corn law*.

"But *forty days' tyranny*, my Lords; think of the mischief that may be done by forty days' tyranny!" exclaimed his great rival and bitter enemy, Lord Mansfield: whose place was at the head of the *Tories*, then, for a short time, by an extraordinary fortuitous concourse of atoms, cast into opposition,—and who, had his place been then, as commonly, on the ruling side, would have been still more eager, in so far as his conspicuous timidity would allow him, to give *maximization* to tyranny and whatever profit might be to be made of it. *Fee-fed* and *self-fed* Judges, both: both, as in the higher grades are all English Judges, drafted from the class of *mercenary advocates;* that class which, under matchless constitution, is the nursery for the whole of the talented portion of the fraternity of self-authorized depredators and oppressors, in the shape of legislators and administrators.

Instructional. Exemplificational.

Art. 54. Analogous to the establishment, and occasional suspension and revival, of the sort of *War Code* here in question, is, in English practice, the *Proclamation of Martial Law* anywhere; as also the various arrangements occasionally employed for prevention or quelling of *insurrection* in *Ireland*. *Amplitude* of powers, and *scantiness* of all securities against the abuse of these same powers, are two congenial properties, of which these enactments may be seen affording exemplification, as ample and instructive as can for any purpose be reasonably desired.

Section XIII.

Military Judicature.

Instructional.

Art. 1. On the occasion of the *excepted judicatories* (Ch. xii. Judiciary collectively, Section 1, *Excepted Judicatories*,) by which application is to be made of the general principles of judicature to the particular situation of the functionaries belonging to the Defensive Force, the Legislature will take for the standard of reference the several arrangements by which those same principles are applied to the rest of the community, as also to those same persons in so far as their situation agrees in other respects with that of their non-military fellow-countrymen.

It will therefore be considered—in what particulars the difference between the two situations requires a correspondent difference of arrangement in the case of the two sorts of judicatories,—to wit, *non-military* or say *civil*, and military.

In particular, it will be considered—whether, in this line of service, a many-seated judicatory, such as that customarily in use under the name of a Court-Martial, or a single-seated judicatory as in other cases under this constitution, with or without a *quasi-jury* sitting incidentally as a body of assessors to the judge, may be preferable. See Ch. xvi. Quasi-Jury.

Instructional.

Art. 2. Of the difference between the circumstances in which the civil judicatories, and those in which military judicatories are placed, examples are the following:

1. As to disobedience. To the orders of the civil functionary, execution and effect might in a large proportion fail to be given, with comparatively small defalcation from the security which it is the object of the civil judicatory to afford.	1. As to disobedience. To the orders of a military functionary, a single act of disobedience might suffice to bring ruin on the state. Still the power should not on any occasion, through negligence, be suffered to extend beyond what is regarded as necessary to provide against the supposed danger.
2. As to mischief from delay. In the case of a civil suit, delay of considerable length will, in a considerable number of instances, not be productive of any considerable bad effects, nor any ultimately bad effect at all to any person but him on whom, in consideration of his supposed culpability, the burthen of compensation for the burthen of the suffering produced by him on the other side, is imposed.	2. As to mischief from delay. In the case of an order given in time of war by a military commander, the delay of a moment may not be distinguishable from disobedience.
3. As to partialities and dissensions. In a civil judicatory, the number of the individuals with whom the Judge would have to mix in social intercourse would, at any rate, in proportion to the whole, be extremely small: and by appropriate institution it may be, as it is here endeavoured to be, made much smaller.	3. As to partialities and dissensions. In a military judicatory, the individuals subject to the jurisdiction of the Judge could not, any of them, unless by accident, fail to be known to him. They would be known to him—as in an extensive manufactory the working hands in general are personally known to the principal managing hands.
4. As to promptitude of communication. In a civil judicatory, the individuals subject to its jurisdiction are, with a few exceptions, all of them within the reach of the judgment-seat at one and the same time: with no other difference than that which is constituted by the distance between their respective abodes and the judgment-seat: to wit, nowhere so much as half a day's journey.	4. As to promptitude of communication. In a military regimental judicatory, suppose one and but one Judge or set of Judges, the whole body is at all times liable to be broken into detachments, sent in any numbers to any distance from the seat of judicial authority, and from one another: decomposed thus into bodies, of which no more than one shall be effectively within the reach of this military judicatory, in the way that with small and casual exception all within his jurisdiction are within the reach of the civil Judge.

Instructional.

ART. 3. From the institution of Courts-Martial, each composed of a council of officers of different grades, two inconveniences are inseparable; to wit, 1. more or less of mutual dissatisfaction, where the same individual is by one portion of the Judges pronounced guilty, by another innocent; and 2. where the part taken by the judgment or the affections of the highest in rank, or other most influential person, is known,—comes, on the side opposite to his, the suspicion that suffrages have been procured to his side by sinister interest: to wit, by the desire of obtaining his favour at the expense of justice. In the judicatory in ordinary, as delineated in this Code, the inconvenience from mutual dissatisfaction has no place: and against the suspicion, other remedies—ample and efficient—are provided. The Legislature will inquire and consider whether, by the many-seated judicatory exhibited by a Court-Martial, advantage in any shape is in any and what cases presented, substantial enough to preponderate over the here-mentioned inconveniences.

Instructional.

ART. 4. In time of actual service, in an army which is in a state of actual conflict with an enemy, all general regulations must give way to the necessity of the moment. But if the two most efficient guardians of justice—the *inequality-minimizing principle* and the *publicity-maximizing principle*, have taken root in time of peace, no demand for implicit obedience can be so urgent, but that the pressure of the yoke may receive more or less of alleviation from regard paid to those same salutary principles, and the corresponding rules.

Instructional.

ART. 5. In military legislation and judicature, as compared to civil, a sort of opposition has been commonly regarded as having place, between the interest of *justice* and the interest of *power;* in so much that to security, *ab extra*, in military legislation and judicature, a sacrifice to an extent more or less considerable, must (it is supposed) be, and is accordingly made, of justice: regulations which, in a civil case, would be established with a view to *justice*, are accordingly, in this or that military case, made to give way to others, which are regarded as most conducive to the *maximum of efficiency* on the part of the national force. This sort of conflict being admitted,—follows the observation—that in time of *war*, the demand for corroboration of *power* is at its *maximum;* the demand for *justice* at its *minimum;* in time of peace the demand for *justice* is at its *maximum;* the demand for corroboration of *power* at its *minimum*. What at the same time is observable, is—that whatever *punctuality* of obedience is necessary in time of war, is so in time of peace: for if a habit of disobedience takes root and gains strength during the one period, it will naturally, and little less than necessarily, remain and operate during the other period, or at any rate at the commencement of it. If between the state of the law in this respect in time of peace, and its state in time of war, there be in this particular a difference, the mischief produced by suffering, through neglect, the establishment of a habit of disobedience, will be the greater the longer the habit has continued: and thence the longer the country has continued in a state of peace.

Instructional.

ART. 6. Note, that among military and non-military persons taken together,—the case of disagreement, as between class and class, is susceptible of the following diversifications.

1. Disagreement as between individual and individual, both being in the private ranks.
2. In the several officer-grades, disagreement between individual and individual in the same grade.
3. In all ranks and grades, disagreement as between the individual of one rank or grade and the individual of another.
4. In some cases, more particularly as between landsmen and seamen, and between both and marines,—between the functionary of any rank or grade and the functionary of any other, in two different armature classes.
5. Disagreement, as between a military functionary in the rank of private, and a non-military individual.
6. Disagreement, as between a military functionary in any grade below the highest stationed on the spot, and a non-military individual.
7. Disagreement, as between a military functionary in the highest grade stationed on the spot, and a non-military individual.

Instructional.

ART. 7. To the judicatory in ordinary will belong of course the cognizance of the three last cases: unless in the character of plaintiff, or say pursuer, the non-military individual gives it to the military.

Instructional.

ART. 8. So likewise of the four first, unless the subject-matter in dispute, in so far as property is concerned, is property purely military, —in so far as reputation is concerned, reputation purely military.

Instructional.

ART. 9. As to the offences affecting *person*, the cognizance capable of being taken of them by a military judicatory need not preclude the civil judicatory in ordinary from taking cognizance of them.

Instructional.

ART. 10. Remain, as cases cognizance of

which cannot without manifest impropriety be taken by the judicatory in ordinary as such,—cases as between this branch of the public service and the individual, bearing on any point of military discipline: as per Section 7, *Discipline established*, Art. 4.

Instructional.

Art. 11. On the other hand, it follows not that, because it is necessary that by appropriate means punctuality of obedience should be kept up in time of peace as well as in time of war, —therefore, for the accomplishment of this object in time of peace, means must uniformly be employed as high in the scale of severity as those employed in time of war. All that is wanted is the *punctuality;* and if in time of peace, by means less severe, punctuality can be kept up in a degree as high as by means more severe, the difference would be so much suffering expended in waste.

Instructional.

Art. 12. Moreover, if instead of being employed alike in *both* cases, the extra quantum of punishment is reserved exclusively for a state of *war*,—the fear of it may naturally operate with greater effect, when applied to minds to which it is *new*, than when applied to minds to which by habitual presence it has been rendered *familiar*.

Instructional.

Art. 13. As to the *minimum* sufficient,—no otherwise than by a course of experiment can it, in the nature of things, be made known.

In the first instance, employ (for example) the least quantity that presents any promise of being effectual; *that* being found insufficient, add another quantum, and so on.

In time of *peace*, experiments of this sort may be made with little or *no risk;* in time of *war*, scarcely without the utmost risk.

Instructional.

Art. 14. For this purpose, the best adapted course seems to be this. To the offences in question, attach punishments of the kind in present use, in a scale commencing with a quantity no matter how small, and terminating in *mortal* punishment.

But (what it is believed, has never as yet been exemplified) divide the scale into two parts: allowing to the judicatory in a state of *war*, all the degrees contained in the part above; but limiting the option of the judicatory, in time of *peace*, to the degrees contained in the part below.

Instructional. Exemplificational.

Art. 15. Example I. *Desertion*. Under this one name—*desertion*, are commonly included two species, widely different in degree of maleficence. These are—1. *Simple* desertion; 2. *Transfugitive* desertion. *Simple*, when the deserter merely quits his own service: *transfugitive*, when, in quitting it, he passes over to an enemy's service.

In time of full peace—(war, neither actual nor apprehended as impending)—*transfugitive* desertion has no place: remains capable of being exemplified no other species than the *simple:* mischievous effect, exceptions excepted, inconsiderable, and easily reparable: exception is—where, by the operation of some cause, instances to a certain degree *numerous*, are produced, at or about the same time. Now, admitting that in time of war, for *transfugitive desertion death* may be an apposite punishment, and the option of applying it may be given to the Judge,—still, for *simple* desertion, scarcely can there be any need of giving to the Judge any such option to be exercised in time of peace.

Instructional. Exemplificational.

Art. 16. Example II. *Disobedience of orders*. In time of *peace*, to such a degree indeterminate and diversified is the nature of the offence thus denominated,—that the maleficence of it varies upon a scale beginning at 0, and ending at a degree not inferior to that of *transfugitive desertion*. But in this scale, lines may be drawn, below which there cannot in time of *peace*, be any demand for any such punishment as *death*.

Instructional.

Art. 17. For the purpose here in question, one line of distinction requisite is—*that* which separates *simple* disobedience of *orders*, from that which is *specially maleficent*. By *specially maleficent* understand, productive of any act placed on the catalogue of offences, whether in the *general Penal Code*, or in the *Military* Code.

Instructional.

Art. 18. Take it unaccompanied with special maleficence, as above,—it will either *be* or *not be* accompanied with *evil consciousness*:—consciousness of the contrariety of the conduct maintained, to the conduct lawfully prescribed: and, when in this sense *wilful*,—the offence may receive a punishment, which shall be the same in all cases: the offence will, in this case, consist in the *disregard* manifested by the subordinate as towards the authority of his superordinate: *contempt* is the name given, in English law, to the disregard, when,—the functionary towards whose order it is manifested, being a judicial functionary,—it is dealt with on the footing of an offence.

For this offence, setting aside the case of repetition, small indeed is the punishment for which there can be any demand, the offence being supposed pure of any intention of positive insult. Be the offence what it may, punishment will indeed be nugatory, if it falls short of what is necessary to outweigh the profit produced in all shapes by the offence: but, in this case, by the supposition, no such profit has place.

Instructional.

ART. 19. Slight, in this case, for a first offence, the punishment may be made; in a considerable degree more severe for a second; and so on till it ends in ignominious discharge. This, in time of peace; but, in time of war, in or near the presence of an enemy, it may have had for its object the effect of desertion, simple or transfugitive, on the part of the entire corps; and, in such case, the punishment necessary will be proportionable.

Instructional.

ART. 20. For the statement and exposition of the several appropriate and peculiar *rights* and *powers*, which appertain respectively to Military functionaries of the several *branches* and *grades*,—the *wrongs* and corresponding *offences* commissible by them,—and the several *remedies*, *preventive*, *suppressive*, *satisfactive*, and (for *subsequential* prevention) *punitive*,—see the *Stipendiary Army Code*, the *Stipendiary Navy Code*, the *Radical Army Code*, and the *Radical Navy Code*.

Instructional.

ART. 21. In time of actual service, especially in the presence or within the reach of the enemy, the judicial power, without being liable to be stopped by appeal, should it not be in the hands of the commanding officer on the spot? Principle, the *external security-maximizing*.

Instructional. Expositive.

ART. 22. Of this phrase, *on the spot*, a definition will, on this occasion, require to be given in and by the Military Code.

Instructional.

ART. 23. Sole but indispensable check in this case, *registration*, in so far as the exigency of the case will admit: registration, and subsequent *publication*.

Instructional.

ART. 24. This may have place, without prejudice to subsequent appeal for the purpose of *compensation*, or *satisfaction* in other shapes; *attestation* of non-delinquency, for example, see *Penal Code:* tit. *Remedies*.

Instructional.

ART. 25. By possibility, occasions may arise, on which it may be matter of necessity for the commanding officer, with his own hands, to put a subordinate of any grade to death, at the instant. And this, not only for acts of positive aggression, but for a mere negative act, an act of non-compliance with a positive order, whereby the subordinate is commanded to do this or that positive act: for example, to march in a certain direction indicated.

Instructional.

ART. 26. It being (by supposition,) established, and for the reasons in the appropriate places mentioned—that in the ordinary Judicatories (the few inconsiderable exceptions excepted) the Judicatory should, in every instance, be *single-seated*,—in a Military Judicatory can any preponderant mass of reasons be assigned —why seats more in number than one, should have place? and, if in any, in what number? and by what description of persons should they respectively be filled?

Instructional. Ratiocinative.

ART. 27. In the case of military service, the body of reasons *against* such plurality seems even stronger than in other cases at large.

The sorts of cases and suits (it is assumed) are in every instance *penal*.

1. In general practice, the Judges being many, (in English practice for example, thirteen or fifteen,) are taken from the corps to which, at the time of the alleged offence, the defendant belonged.

2. But, in this case, whether conviction or acquittal has place, unpleasant are the sentiments and sensations left, in the breasts of all persons, by whom respectively any part in the judicial drama has been performed, defendants to wit, prosecutors, judges, witnesses: and, by the contemplation of their future contingent affections and conduct—influence, detrimental to justice, cannot but, to a greater or less extent, be exercised. In every one of these cases, the smaller the number of the persons exposed on the one hand to suffering, on the other hand to sinister interest in the shapes in question—the better. In the case of *witnesses*, no reduction does the nature of the case admit of. Not so, in that of *Judges*. Without any assignable detriment to justice, the number may, it should seem, be reduced to one.

3. By the addition made, as at present, to *number one*, arbitrariness in the exercise of the power in question, is (it may be said) more or less reduced. True: but in general practice, *appeal* has not place; and no reason can be assigned why, if on the judgment-seat there be but one functionary, appeal from his decision should not have place in the class of suits furnished by this particular section of the community, as well as in the suits furnished by the aggregate of all the other sections.

4. In what way soever the suit terminates, *transference* of the defendant from the corps in question to another community, presents itself as a desirable result. Person by whose *authority* and order the transference is made, the *army minister*. Persons at the *instance* of any, of whom it may be made—1. the *Judge immediate* by whom the terminative decree was issued; 2. any one, or at any rate any two, of the members *of the corps* in question; 3. the *defendant* himself, whether acquitted or convicted.

Section XIV.

Recruitment.

Instructional. Ratiocinative.

Art. 1. In providing and keeping up a supply of functionaries for the stipendiary branch of the National Defensive Force, the Legislature will bear in mind the positions following:—

I. Of two persons in other respects equally apt, the one unwilling to serve in the situation in question, the other willing,—he who is willing will, on that account, other things equal, be the more apt upon the whole.

II. If, in the room of a person unwilling, another person, not positively unapt, is willing to serve,—such willingness, howsoever procured, will, generally speaking, be sufficient to prove that of the two, the willing is upon the whole more apt than the unwilling one. Principles, 1. the *aptitude-maximizing;* 2. the *contentment-maximizing;* 3. the *expense-minimizing:* expense in hardship being taken into the account of expense. Antagonizing principle, none.

Instructional.

Art. 2. For the raising and keeping up the stipendiary branch of the National Defensive Force, preference will accordingly be always given to voluntary service in comparison with compulsory.

Instructional.

Art. 3. In so far as for the continuous mass of remuneration, apt individuals are found in sufficient number to present themselves,—*bounty*-money will not be offered. As to this, see Section 10, *Remuneration.*

Instructional.

Art. 4. When otherwise than by bounty-money volunteers in sufficient number cannot be obtained, bounties *without* compulsion will be employed, so long as the state of the national power of furnishing pecuniary contributions shall be able to bear the expense, and the pecuniary supply can be obtained with a promptitude adequate to the exigency.

Instructional.

Art. 5. If at any time the demand for an addition to this force becomes to such a degree urgent, that a pecuniary supply adequate to the purchase of it is altogether hopeless,—or cannot, by loan or forced contribution, be procured within the necessary time,—the Legislature will fix for the respective districts and sub-districts their proportionable quota, committing to the sublegislature of the district the choice of the mode of raising, or taking such other more prompt and certain course, if any such there be, as the occasion shall be found to require.

Instructional.

Art. 6. In each district or sub-district, or other smaller division of territory, the number imposed will be raised by a lottery, in which the names of all persons actually serving in the radical force will be inserted,—with or without the addition of those who though not so serving are liable so to serve, as the Legislature shall have seen reason to determine. Principles, 1. the *external-security-maximizing;* 2. the *aptitude-maximizing;* 3. the *contentment-maximizing;* 4. the *inequality-minimizing.*

Instructional. Enactive.

Art. 7. Every person whose name shall, on the drawing of such lottery, have been drawn out, shall be subjected to serve in person, and shall accordingly within the time for that purpose prescribed, on pain of being dealt with as a deserter, present himself to be aggregated to the stipendiary force, unless within that time some apt person, whose name has not been drawn, shall have presented himself to serve as his substitute: no person for whom such substitute has presented himself, and been accepted of, shall be compelled to serve.

Instructional. Enactive.

Art. 8. For those who in this case have thus already been enlisted, *substitutes* will at all times be admitted, as far as consistently with *appropriate aptitude* (as per Section 5, *Term and conditions of Service,*) the exigency of the service will allow. Principles, as per Art. 1.—the *aptitude-maximizing;* 2. the *contentment-maximizing.*

Instructional.

Art. 9. Consistently with this constitution,—only in case of invasion, or imminent danger of invasion, or civil war, can any such compulsory recruitment have place. Principles, 1. the *external-security-maximizing;* 2. the *internal-security-maximizing;* 3. the *contentment-maximizing.*

Instructional.

Art. 10. As in the land-service, so in the sea-service. As in the Land Defensive-Force, the radicals are to the stipendiaries: so in the Sea Defensive-Force, are seamen in private service, to seamen in Government service.

Instructional. Ratiocinative.

Art. 11. As to the determination of the classes of persons to be subjected to this lottery, the most eligible *time* for the formation and notification of it would be—when in respect of the selection to be made of the classes and the individuals, the judgment might be formed without being exposed to the influence of the excited passions of the several individuals in the usual way interested: in a word—a time of *profound peace.*

Instructional.

ART. 12. In giving expression to the *enactments* by which the lottery, with such its necessary exemptions, is established,—the preferable course will be—to say—not *on what* classes the *obligation* shall be imposed, but *to what classes* the *exemptions* from it are accorded. Principle, the *contentment-maximizing;* in which is included the *discontentment-minimizing.*

Instructional. Expositive.

ART. 13. Under some Governments all persons of the male sex, exceptions excepted, are, —either from *birth*, or some later period antecedent to what is regarded as that of *maturity*, —consigned by compulsive power, to this condition in life. Their names being, for this purpose, entered upon a *written register; conscription* is the appellation by which the *instrument of location* is in this case denominated.

Ratiocinative.

ART. 14. Reason in *favour* of this mode of location, this: Being all of them brought up in expectation of serving in this line,—the minds of the persons in question will have been fashioned to it: this being the case, no *disappointment*, nor therefore any reluctance, will have place.

Ratiocinative.

ART. 15. Reasons against this same mode of location, these:—

1. On the part of *parents*, and other relatives, discontentment may at all times, to any degree of extent, and on the part of each to any degree of *intensity* imaginable, have place, without its coming, at any rate in all its details, under the cognizance of the legislature.

2. So on the part of the *conscripts* themselves; especially if enlisted at a time of life some years later than that of birth, in such sort as to be susceptible of appropriate observation and reflection,—of observation, in particular, of the effect produced by the arrangement on the language and deportment of their parents, as above.

3. If the time of enlistment be that of *birth*, —in this case, true it is, that on the part of the conscripts themselves, the danger of discontentment is minimized: still, will it be far from being excluded.

4. On this plan, exceptions in no small number and variety will of necessity be to be made; consequence, in the arrangement and enactments proportionable *complication;* in the minds of the non-exempted, *discontent.*

Instructional.

ART. 16. As to volunteers, note, that by remuneration competent in value, attached to the *officer* grades, the having served for and during a competent time in the rank of *private* being at the same time attached as a condition to admission to the lowest of the officer grades, —the discontentment will naturally be *minimized:* sole seat of it, the breasts of a proportion, more or less considerable, of the number of those parents and other relatives of any such persons as, in the character of *volunteers*, are thus self-located against the wishes of those same relatives.

Instructional. Exemplificational.

ART. 17. In some countries it is from their mother's womb that the recruits have, as above, been born into the locable list, and thence adopted into the army list. From a constitution such as the present, the expense, in money or money's worth, will at a first glance suffice to put an exclusion upon this resource. Only that it may be seen not to have been overlooked, is mention in this place made of it. In those countries, the form of Government having for its end in view the maximizing of the happiness of the ruling one, at the expense to whatever amount of that of the millions,—the principle pursued, in relation to this class of functionaries—instruments at the same time and victims of the appetite of the ruling one—is not the *number-minimizing*, but its opposite, the *number-maximizing principle.*

As to the individuals destined from birth to be shot at, as pigs are to have their throats cut, it seems probable that, being brought up and educated in this expectation, their suffering will on this account, with here and there a casual exception, be, or at least be capable of being made to be, inferior to the suffering experienced by those who, at the age of maturity, find themselves aggregated to the service by force or fraud.

Supposing the education well adapted to this its end, the *means* of aptitude will on this plan be greater than any other. Here then comes in the conflict between two antagonizing principles; on the one side, the *aptitude-maximizing*, supported by the *contentment-maximizing:* on the other side, the *expense-minimizing.*

SECTION XV.

Disbandment.

Instructional.

ART. 1. Throughout the whole time of peace, the existence of a military force supposes a constant danger of war: and in political communities in general, down to the present time, this supposition has received but too much confirmation from melancholy experience.

Instructional.

ART. 2. During peace, the better prepared a community appears to be for the renewal of war, by resistance made to actual aggression, —the better, other circumstances equal, will be its chance of preventing such aggression, by fear of the evil consequences to the aggressor. By this consideration will the operation of disbandment be, of course, in a main degree

regulated. Of the force which at the close of the war the Government had on foot, *retained* will be, in preference, that portion which, on a renewal of war, it would require the longest portion of time to bring to a state of adequate appropriate aptitude. Or say, *disbanded*, in preference, those portions which in the shortest portion of time are capable of being brought to that same desirable state. In addition to *promptitude, certainty*, it is true, is an element which may present itself, as claiming to be taken into the account of value. But, forasmuch as the state of the community in question must be extraordinary indeed, if those portions of the defensive force which it had at one time, could not, sooner or later, be brought into existence at another time,—for simplicity's sake, the consideration of *certainty* may accordingly, generally speaking, be discarded from the account, and that of *promptitude* alone set down for consideration.

Principle applying to this particular case, say the *Difficult-replaceability* principle, or the *Easy-replaceability* principle: with equal propriety either may serve, according as *retention* or *disbandment* is the object of reference. Generally applicable principles—1. the *External-security-maximizin* ; 2. the *Internal-security maximizing*; 3. the *Aptitude maximizing*.

Instructional.

Art. 3. To bring the men to a state of adequate appropriate aptitude, different armature classes require different lengths of time: say different numbers of *days*, supposing on each day, in the case of each class as compared with every other, the same number of *hours** employed in the learning of the exercises.

Hence, corresponding to the above-mentioned *Difficult-replaceability* or *Easy-replaceability* principle, comes the following Rule. Disband in preference the armature class, which, for endowing it with adequate appropriate aptitude, requires the smallest portion of time: next, that which requires the next smallest: and so on.

Instructional.

Art. 4. For this purpose, the following scale, composed of modes of operation, with corresponding comparative lengths of time annexed, will constitute an appropriate subject of inquiry for the Legislature. The blanks for the number are left to be filled up in the Military Code, by advice of professional functionaries.

Armature classes.—Lengths of instruction: time requisite in months, say two. In this number of months, total number of hours of exercise, say as follows:

I. Infantry man in general, hours [.]
II. Infantry rifleman, additional hours [.]

Instructional. Ratiocinative.

Art. 5. Question. The infantry, why not all of them trained to be *riflemen*, that is to say, *marksmen*, habituated to the shooting at a mark? Answer. Reason, the expense: that is to say—1. the *once-paid*, or say *capital* expense, of the rifle gun: 2. the *continuous* expense of powder and shot.

Instructional. Ratiocinative.

Art. 6. In the case of the rifle, the time requisite for loading, and some other circumstances considered,—it has been matter of question whether any preponderant advantage would be obtained,—if to the exclusion of the ordinary musket, the rifle were employed by the whole body of the infantry. But, supposing the question determined in the negative,—it would not follow, that by no part of that body should this instrument of extraordinary efficiency be employed. For, supposing the ordinary musket preferable in the engagement between body and body, drawn up collectively, and in order, on a plain, —riflemen, in a state of appropriate distribution, might still, in the maintenance of a *defile* or other position, in particular in a hilly country, perform a service for which, by the ordinary infantry exercise, without the practice of aiming and firing at a mark, a man would not be so well fitted.

Instructional. Ratiocinative.

Art. 7. III. Cavalry man or Dragoon.—Total of additional hours, [.] Particulars as follow: To the foot exercise, performed by the foot soldier as above, add the hours respectively employed, as follows: 1. Making the *man* master of his horse, that is to say, the *men* taking instruction one by one. Hours, [.] 2. Teaching the man to bear a part in the evolutions performed by the men in bodies. Hours, [.] Total of hours, [.] Subclasses, 1. Heavy-horse or Cuirassiers. 2. Light-horse or lancers. 3. Dragoons. 4. Mounted Riflemen. Differences, of little or no moment, as to this purpose: difficulty of instruction being, in all these instances, nearly, if not altogether, the same.

IV. Foot Artillery and Engineers.—Subclasses ranged in the order of the lengths of time requisite for aptitude, the length indicated by the smallest number denoting the smallest degree of difficulty, are,†

* [*Hours.*]—Unless this degree of *minuteness*, proportioned to which is *accuracy*, be brought to view by the expression,—the result of experiments stated as having occupied the same length of time, may prove delusive.

† As in jurisprudence and other branches of art and science, so in military tactics, a sort of science, void of information, is heaped up,—composed of appellatives, employed in posterior times to designate objects different from those which they were originally employed to designate. Examples are the following:

1. *Grenadiers.* This was the name originally employed for designation of a select class of infan-

1. Artillerists or Gunners.
2. Artificers. Additional hours, [ ]
3. Pontooneers. Additional hours, [ ]
4. Sappers. Additional hours, [.]
5. Miners. Additional hours, [.]

Instructional.

ART. 8. Note, of the forementioned operations, one and no more may be allotted to each man; or to each one of any number of men, one or more of them may be attached. To the ordinary foot exercise, which consists in the discharge of balls, whether solid or hollow, from the hollow cylinder,—the foot artilleryman may add the exercise or exercises belonging to one or more of the other sub-classes.

Instructional.

ART. 9. V. Horse-artillery-man. To the exercise of the *cavalry-man*, the horse-artillery-man adds the firing part of the exercise of the foot-artillery-man. Additional hours [.] Total of hours [.]

VI. Marine Infantry. To the exercise of an *infantry soldier*, *the marine-infantry man* adds, in a certain degree, the exercise and habits of the *seaman*. Total of hours [.]

VII. Marine Artillery. To the exercise and habits of a *marine-infantry man*, the *marine-artillery man* adds the special exercise of working mortars on ship-board, or performing other duties connected with artillery, of a more complicated nature than those required from the seamen in general. Total of hours [.]

In both his capacities, he has to learn, in common with the mere seamen, the operations of *landing* and *boarding*, also the serving in gunboats, floating batteries, and fireships.

Instructional.

ART. 10. Of all these specially instructed classes, not one is there who is not qualified to perform whatsoever can be required to be performed by an infantry soldier at large, in time of peace; not one, the particular service of which the infantry soldier at large is qualified to perform. Hence the following Rules.

Rule 1. So long as an infantry soldier at large remains who can be spared, discharge not one from any one of these specially instructed armature classes.

Rule 2. After appropriate distinction made between land-service and sea-service,—so long as any individual belonging to a less long instructed class remains who can be spared, discharge not any one belonging to a longer instructed class.

Instructional.

ART. 11. Note, that, supposing cavalry men to be kept up in preference to mere infantry men,—it follows not that for and along with each man a horse should be kept up. Once obtained, the aptitude for horse exercise would not ordinarily be lost by desuetude, to any such degree as not to be soon recovered. But, for greater certainty, or in so far as collateral employments for them (as per Section 18) may be found, horses might be kept up, in any number short of that of the whole number of the men: say, for example, half: the men taking care of them and exercising on them, in alternate weeks or months.

Instructional.

ART. 12. Supposing the whole number of the thus specially instructed classes—say, marines, artillery-men and cavalry, kept undisbanded for "guard and garrison service," as is the English phrase,—with the addition of the preventive service,—this supposed, among mere infantry-men, the *riflemen* will, as above, claim the preference over the rest of the infantry.

Instructional.

ART. 13. Supposing no engagement incompatible with it contained in the enlistment instruments,—by the circumstance of comparative difficulty of replacement will be determined the number of the land stipendiaries to be disbanded: privates and officers together. Principles—1. the *aptitude-maximizing*; 2. the *expense-minimizing*.

Instructional. Ratiocinative.

ART. 14. But, supposing a determination takes place in this or that regiment or other corps, to disband a part and no more than a

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try, whose employment consisted in throwing, in the manner of so many cricket balls, a species of hollow balls, styled *grenades*, so constructed, as to burst in the manner of the bombs projected from mortars. The idea appears to have originated in the war of sieges carried on for the amusement of Louis the Fourteenth. For this favoured service the tallest men were selected; and to make them look the taller, and thence the more formidable, the caps distinguished by the name of grenadier caps were employed. These portable *mortars* or hand-*grenades* being no longer employed, the consequence is—that to non-military men, the term *grenadier*, so far as its meaning can be collected from its derivation, is delusive. The actual meaning of *grenadiers*, at the present period, is a body of picked *infantry of the line*.

2. *Dragoons*, as applied to mounted troops in general. Originally, one body of men were exclusively employed on foot; another body, on horseback. The distinction had its origin in feudal times, during which, between the man who was and the man who was not, rich enough to keep a horse, a great gulph was fixed. In France, in the reign of Louis the Fourteenth, a discovery was at length made, that, by using one sort of weapon on horseback, a man would not be altogether disqualified from using the same or another sort of weapon on foot. Hence came an amphibious class, to which, from their composite nature, a *dragon* being a serpent with the wings of a bird,—added to the terror which their experienced efficiency inspired,—was given the name of *Dragons*,—in English pronunciation and consequent orthography, *Dragoons*.

part of the whole number of the privates,—thereupon comes a state of things, in which application may be made of the *contentment-maximizing* and *inequality-minimizing* principles.

Instructional.

Art. 15. For this purpose, what is most desirable, of course, is—that the number of those who are desirous of being discharged, should be exactly the same with the number which the government is desirous of discharging: or what comes to the same thing, the whole number of those who are desirous of being *kept*, will be exactly *that* which the Government is desirous of *keeping*.

Instractional.

Art. 16. But against the existence of this state of things, the chances will be several hundreds to one. Provision must accordingly be made for two opposite states of things: 1. that in which the number desirous of being kept, is greater than that which the government is desirous of keeping: 2. that in which the number desirous of being discharged, is greater than that which the Government is desirous of discharging.

Instructional. Ratiocinative.

Art. 17. In Section 10, *Remuneration*, Arts. 8, 9, the observation has been made that, in the natural state of the case, bating some extraordinary degree of mismanagement on the part of Government, the number of those, if any such there be, who are desirous of being discharged, will at all times be very small: and, if at all times, much more upon the substitution of a state of peace with its security and repose, than of a state of war with its perils and toils. But no contingency should be left unprovided for; in the nature of the case, the state of things in question is susceptible of as many diversifications and correspondent degrees, as the aggregate of the defensive force contains privates; and if, in the management of defensive force mismanagement has place,—better it should remain to other nations unknown; unless on its being known, punishment attaches upon it—a result which, how frequently soever merited, will not, even under the best Government, be an altogether probable one.

Instructional.

Art. 18. On this occasion, from two different sets of persons, two facts there may be adequate reason for keeping concealed:

1. At a time when the number desirous of being discharged is to a certain degree considerable, the persons from whose eyes it may be desirable that the *number* should be concealed, will be—not only the people at home, but also the people and Governments abroad.

2. At all times, and be the number ever so large or ever so small, persons from whose eyes it may be desirable that the *individuals* desirous of being discharged shall be concealed, are their respective superordinates: reason for their not being known, danger of displeasure and oppression at the hands of these same superordinates.

Instructional.

Art. 19. These points considered, suppose, 1. the danger of divulgation of *number* to people and foreign powers unremoved,—the evil to be apprehended then is, that the ruling powers would not come into any measure for this same joint purpose of keeping *in* the contented and letting *out* the discontented. Suppose, 2. the danger of divulgation of *individuals* and consequent oppression unremoved—the evil to be apprehended then is, that many of the subordinates in question would prefer suffering under present oppression, to the increasing the danger of ulterior oppression, for the amount of which, antecedently to experience, no precise limit could be found.

Instructional.

Art. 20. The ensuing plan has for its object, the keeping of both these secrets; and at the same time, and by the same means, maximizing the number who, according to their desires, are retained; together with the number of those who, according to their desires, are discharged.

Instructional.

Art. 21. Mode of voting for discharge:

1. For the whole number of the privates and non-commissioned officers, in the aggregate of all the regiments in which the number of those same functionaries is meant to be diminished, are provided an equal number of *voting-cards*.

2. To each regiment are allotted cards in number equal to the whole number of those same functionaries belonging to the regiment.

3. The cards, all equal or similar: dimensions (suppose) a square inch.

4. For receiving them, two equal and similar *vote-receiving boxes*, closed: in each a slit: depth of the box such, that the last of the cards may drop through without sticking.

5. On the lid of one, in large *placard* letters, the words, *Discharge me:* of the other, *Keep me.*

6. These boxes are kept in such sort near to one another, that a card may be dropped by a man into either of them, without its being possible for any other person to see into which. This may be effected in various ways: for one way see Ch. vi., Legislature, Section 8, *Election Apparatus*, to Section 11, *Election, how:* (from Bentham's *Radical Reform Bill*, Section 4, to 7, vol. iii. p. 567 to 577.)*

* Another proposable mode is—giving to each man two cards, each with his name on the one side, but on one of the two, the words *Discharge me*, on the other the words *Keep me*. As to this, however, there could not be any adequate assurance of its answering the purpose: for, an officer might

7. Even to those who, in other particulars, have not learned to read, the difference in import and effect between the two inscriptions, has (it is taken for granted) been rendered familiar, by the view of two exactly correspondent ones kept hung up in some place or places of universal resort.

8. On the card delivered to the voter, has been stamped, or so written as not to be exposed to mistakes, his name and description, as entered in the *Muster Book*, with the name of the writer (for responsibility's sake) and the year, month, and day of the month: and, on the other side, a *number*, different in the case of each voter: the numbers following one another in numerical order.

9. In the *Muster Book*, in connexion with each voter's name, entry is made, of the act and time of his voting by the dropping in of his card.

10. The voting completed, the two boxes will be transmitted together to the seat of Government, addressed to the Army Minister.

11. The two boxes, each in a separate room, are for the first time opened, each of them by two or more persons, of each of whom it is known that he is unable to read writing.

12. By them the several cards are ranged in regular lines, each card with the comparatively plain side uppermost, having (as per No. 8) nothing on it but a number.

13. Into the room are then let in two persons, who, being able to read, range the cards in numerical order, and in an appropriate Record-book make entry of the total number contained in each box: and so successively in the case of each regiment.

14. When thus counted, the cards are dropped one upon another, in numerical order, into boxes of appropriate form, forming so many piles, each card with the numbered side still remaining uppermost, the lettered side remaining invisible to every person. To each box its lid is then immoveably attached by a certain number of *seals*.

15. These are the *seals* of so many high functionaries, to whom the knowledge of the proportion between the number of those desirous to be kept, and that of those desirous to be discharged, may be confined: suppose, the Prime Minister, the Army, Navy, and Finance Minister.

16. If the number desirous to be *discharged* is *not* greater than that which the Government is desirous to *discharge*, all are thereupon discharged: for this purpose, the boxes are opened; the cards read; the persons desirous thus ascertained; and, for their discharge, appropriate orders sent to the several regiments.

17. If the number desirous to be *discharged* is *greater* than that which the Government is desirous to *discharge*, the above-mentioned name-cards are all emptied into a box, having, instead of a lid, a cloth with a slit in it, big enough to receive a hand and arm; after having thus been mixed unseen by several successive hands, they are drawn out, one after another, in a number equal to the intended number, as above: in relation to these the orders for discharge are sent: the others remain unknown.

18. In the same manner, when the number desirous of being *kept* is greater than the Government is desirous of *keeping*, are ascertained those who shall actually be kept.

19. As to the case, where the number desirous to be discharged is greater than the number actually discharged, relief, if the number of them be not too great, might be afterwards given to them: to wit, by receiving volunteers offering themselves for enlistment without bounty-money; and, for each volunteer so enlisted, discharging one of the men desirous of being discharged, as above.*

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engage men under his command, to preserve each of them, for the purpose of showing him, the card that had not, as above, been employed.

* In relation to disbandment, the following paragraph followed immediately on the conclusion of the Extract on the subject of the United States, which forms the note to Art. 33, in Section 6, *Promotion*.

Anno 1815–16, the termination of the war with England presented a case of no ordinary difficulty and delicacy. The only purpose for which a regular standing military force is meant to be kept up in the United States, is that of garrisoning a cordon of posts extending between 2,000 and 3,000 miles, for a protection against aggression from the Indians.

By the last war with England, the regular force, exclusive of the militia, had been swelled to about 15,000 men. At the conclusion of this war a determination was taken to give up every idea of keeping on foot any regular force whatever, in the character of an eventual protection against the force of England, of Spain, in short, of any other foreign nation. England, in comparison with which no other nation could present any the least apprehension, would, in the event of a rupture, be quite sure of making more or less way into the interior of the United States: and equally sure of being ultimately drowned, as it were, destroyed, or captured, in case of perseverance. Of no such perseverance would the English nation henceforward be able, at this distance, to endure the expense. From England, therefore, all apprehension is at an end.

Remains, as the only existing source of incursion, from the Indians. Against evil from this source, the above number of 7000 was and is regarded as sufficient.

The difficulty now was—how to reduce No. 15,000 to No. 7000, *i. e.* to less than half. Not that there were not ways enough, in any of which the thing might be done with the ultimate acquiescence of all parties concerned; but the duty fell upon the President; and the task was a most unpleasant and invidious one. No skeleton regiments were to be preserved: the reason has been already given. No war, at any rate any certain war, from any civilized nation was apprehended: therefore, in proportion as the privates were dismissed, the officers, it was necessary, should be dismissed with them.

Instructional.

Art. 22. *Officers.* The difficulty of drawing the line of separation considered,—the legislature will consider and determine—whether, on this occasion, and for this purpose, the engineer class and the artillery class may not be regarded as constituting one and the same class.

Instructional.

Art. 23. For the perfection of appropriate scientific aptitude, both these classes requiring a perfect acquaintance with the higher branches of *posology*, or say, *mathematics, trigonometrical* and *meridional surveying*, and *hydraulics* as applied to *architecture*, in particular with a view to *sieges*—the order of their respective degrees of proficiency in the aggregate of the operations belonging to the aggregate of those same branches of art and science, will, at any rate,—supposing aptitude equal as to all other parts taken together,—be the proper order of preference.

Instructional.

Art. 24. Note that, antecedently to their location on the *locable list*, as per Ch. ix. Section 16, their respective aptitudes, absolute and comparative, will have been decided on, on the ground of the appropriate examinations, by the votes of the *qualification judicatory:* and in the nature of the case, there is nothing to interdict the repetition of those same means of proof at any time.—Reluctance! Yes, nothing can be more natural. Reluctance! but on whose part? on the part of the unapt, and of the unapt only; and as the strenuousness of the reluctance, will be the degree of inaptitude. Antagonizing principles:—on the one part, 1. the *external-security-maximizing;* and 2. the *aptitude-maximizing;* on the other part, 3. the *contentment-maximizing.*

Section XVI.

Sea Defensive Force.

Instructional.

Art. 1. In respect of what particulars do the arrangements desirable in the instance of the sea stipendiary force differ from those desirable in the instance of the land stipendiary force? These particulars the Legislature will have constantly in mind.

Instructional.

Art. 2. *Rule.* Exceptions excepted, whatsoever arrangement is with preponderant advantage applicable to the land defensive force, is so to the sea defensive force.

Instructional.

Art. 3. Exceptions are, all such arrangements as shall have been found prescribed by special assignable points of difference in the respective natures of the two branches of service. Call these points of difference, the *differential circumstances.*

Thus, by mutual comparison and observation made of analogies, the state of things in both branches of the military defensive service may be *optimized:* observation being made, on the one hand, of the several subject-matters and points of *agreement*, or say of *coincidence*, by which they are *assimilated:* on the other hand, of the several subject-matters and points of diversity by which they are distinguished: each thus affording instruction with relation to the other.

Instructional. Ratiocinative.

Art. 4. I. Subject-matter of diversity the *first:*—the appropriate *military exercises.*

In the case of the *land*-service, the military manipulations and evolutions are capable of being performed in any *places*, by all persons

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The expedient employed was this:—the President convened a General Board, composed of *seven* officers, selecting, of course (for such was his obvious interest) those whose reputation he regarded as standing highest in the country. No such operation as dismissal took place, but the existing army was regarded as being completely and all at once disbanded, as being (for the purpose for which it was raised) no longer necessary. But, for a purpose of a different nature, another army as above was to be raised. Here then a choice was to be made—made at the same instant—of all the several officers, of whom the official establishment of this new army was to be composed. The board accordingly had their meetings; and it was by the concurrent suffrages of all the members, or at least of the majority, that the selection was made.

Thus the number in question were appointed, and none were dismissed: admissions, so many, dismissions, none. What could not be expected was—that by those who found themselves left out of the list, it should be regarded with a degree of satisfaction equal to that with which it was regarded by those whose names were comprised in it. But, whatever dissatisfaction was felt, none of it, it was evident, could reach the *President:* the whole of it fell upon the *Board:* and the Board—such was the strength of its composition—found no difficulty in enduring it. A Board, there has been occasion to observe elsewhere, is a *screen.* Against the tutelary force of the popular or moral sanction, a screen is in general a highly pernicious instrument: but in the present instance, the force against which it was employed as a screen was—not that of the popular or moral sanction—the tribunal of public opinion, composed of members whose interest is the universal interest—but the force of individual self-preference, acting in opposition to the universal interest.

Those who were not comprehended, were they neglected? No: they were not neglected. Note was taken of them: and, as opportunity offered, provision has been made for them in the civil line; several of the existing consuls have been in this number; the gentleman who serves in that character in this country is of the number. The loss he has sustained of an arm affords a conspicuous proof, and an honourable memento of it.

without distinction, where physical force is adequate: and, moreover, in the *radical* branch, on the part of a sufficient number, adequate inducement as well as means for the performance of such exercises, may, in almost all *places* and *times*, be found.

In the case of the *sea*-service, in addition to the military exercises, the nature of the service necessitates others that are non-military, that is to say, those by which motion and direction are given to the vessels in which the men and things together—the *personal* and the *material* stock—have their characteristic and essential moveable abode. As to the *manipulations*—except in so far as those employed in the *land*-service happen to be exactly copied in the *sea*-service,—they bear no resemblance to those employed in the *land*-service: as to the *evolutions* in the *sea*-service, those employed in the land-service, the form and comparative smallness of the field render impossible: in the sea-service, if among such operations as are performed by the combined exertions of numbers at a time there be any to which the term *evolutions* is applicable, they are in the *sea*-service of a nature altogether different from what they are in the *land*-service.

While, by men, in whose instance, whatsoever may eventually be their lot, no design to engage in the practice of the military exercises in either branch, has place, the practice of the non-military sea exercises will in their quality of seamen be engaged in, to wit, on private account, or in private service,—scarcely to any of them will it happen to engage, or in the course of their sea-service to be disposed to engage, in the practice of those land exercises which are purely military.

Instructional. Ratiocinative.

ART. 5. II. Subject-matter of diversity the *second:* circumstances relative to the *Erudite* grades. In Section 1, of Supplement, and Section 4, *Stipendiaries*, are brought to view the elementary aggregates, by the continual addition of which, in the land-service, grades rising one above another are constituted. Number of units in the smallest, or say first elementary aggregate termed a *Squad*, 6: component individuals, privates 5; corporal 1: a plan of aggregation this, the aptitude of which is generally regarded as being certified by general practice.

In the sea-service no such regular plan of aggregation seems to be either needed or easily capable of being established. From a ship of war no detachments can be made but in boats; nor in these, but for and during the short and always precarious time which a boat can live in the open sea: and between the numbers necessary to be occupied, at the same time, in the production of a given effect in the two cases, scarcely can there be found any degree of resemblance. Thence it is that in the *sea*-service the *grades* are everywhere so much less numerous than in the *land*-service.

Instructional.

ART. 6. III. Subject-matter the *third*. *Grades*—their *denomination*. As between the one service and the other, no small confusion of ideas and misconception are produced, by the giving to a considerable extent to situations so widely different in power, one and the same denomination. In the land-service the number of privates for the designation of whose commanding officer the word *captain* is employed, is not greater than 100; while in the sea-service, it runs in English practice as high as 1200 men, and in the service of other nations to still higher numbers, say 1500 or 1600; and so, in some sort, in the case of *lieutenants:* of whom, under the captain, in the land-service there are no more than two, in the sea-service as many as six.

Instructional.

ART. 7. To the Legislature it will belong—to consider and determine whether to any and what extent it may be worth while to substitute, to that at present established, a correspondent *vocabulary* of *official denominations:* and, accordingly, whether that which is in use in the land-service should be extended to the sea-service, or that which is in use in the sea-service to the land-service; or whether a new system, different from both, shall be applied in common to both.

Instructional.

ART. 8. IV. Subject-matter the *fourth*. *Remuneration;* rising or not with *grade;* as to which see Section 10, *Remuneration*, Art. 41. For guidance, the same principles will apply in the one case as in the other; but the result of the application may in the two cases, be to a considerable degree different.

Instructional.

ART. 9. V. Subject-matter the *fifth*—*Officers*. Distinction between *ordinary*, or say *non-commissioned;* and *Erudite*, or say commissioned. This distinction—whether in any, and if in any in what degree and manner, applicable in the case of *sea-service?*

Instructional.

ART. 10. VI. Subject-matter the *sixth*. *Locable who:* to wit, in the situation of *commissioned officers*. In the case of the land stipendiary service, (as per Section 4, *Stipendiaries*,) a comparatively short time—say a twelvemonth, will suffice for qualifying a person whose name has been admitted, as per Ch. ix. MINISTERS COLLECTIVELY, Section 16, *Locable who*, into the *General Locable List*. In the *sea* stipendiary service, no such short time can reasonably be expected to be sufficient: consideration had of the *manipulations*, by which alone motion and direction can be given to navigable vessels, and of the variety of appropriate gymnastic exercises, the performance of

which is thereto necessary; as also of the great variety of subject-matters of information, necessary to be continually borne in mind.

Instructional.

Art. 11. To the Legislature it will accordingly belong—to consider, in addition to the points of appropriate aptitude, intellectual and active, requisite in the *land*-service, what ulterior points shall be requisite to be possessed in the *sea*-service: and, in the case of a candidate for admission into the relative *locable list*, before an appropriate *qualification-judicatory*, what *course* of examination shall have been undergone, antecedently to his location in the lowest of the Erudite grades: in the lowest grade occupied by a commissioned officer in the *sea*-service.

On this occasion, in respect of the appropriate qualifications necessary,—notice will be taken of the difference, as between the *scientific* and the *non-scientific armature* classes in the land-service.

Instructional.

Art. 12. VII. Subject-matter the *seventh*. Officer's previous service in the situation of *private*. On this occasion will be considered, how far the reasons which, as per Section 10, *Remuneration*, Arts. 17 and 18, apply to the *land*-service, apply also to the *sea*-service.

Instructional. Ratiocinative.

Art. 13. VIII. Subject-matter the *eighth*—*Compulsory aggregation*. In case of emergency, of the Radical branch of the *sea* defensive force, shall the *personal* stock, in any and what portions of it, be liable to be compulsorily aggregated (as per Section 14, *Recruitment*) to the stipendiary?

Answer. In this case, as in that of the *land*-force—No: *unless* and *in so far as*, for obtaining the supply voluntarily, with or without pay for enlistment, the *money* necessary cannot in time be found. Principles, the *contentment-maximizing*: the *inequality-minimizing*.

Instructional. Ratiocinative.

Art. 14. IX. Subject-matter the *ninth*. Like question as to the *material* stock: namely, the vessel with its contents and appurtenances, cargo not included. Answer the same.

Instructional.

Art. 15. Note here, as to the *personal* stock—the *crew*: including, or not including, the several members of the official establishment in the English private service styled *captain* or *master*, and *mates*. For compulsory transference from the *Radical* to the *Stipendiary* branch, whatsoever ground there may be in the *land*-service,—the *necessity* being always supposed—stronger is the ground which presents itself in the case of the *sea*-service. Why? Answer. Because the number of men thus transferred being supposed in both cases the same,—in the *sea*-service, on the part of the seafaring man fully trained in the situation of a member of the Radical force, (that is to say in private service,) relative appropriate aptitude, as in comparison of that of a man therein wholly untrained, is in so high a degree greater than in the instance of a man completely trained either in the Stipendiary or in the Radical branch of the *land* service, in comparison with a man equally untrained.

Instructional.

Art. 16. Note now, as to the *material* stock. In the sea-service, in and by *navigable vessels*, with their appurtenances, is afforded an instance of a mass of appropriate matter, of a sort applicable to the purpose of national defence, over and above whatsoever, in the case of the land-service, is so applicable.

Instructional.

Art. 17. With less reluctance and reserve, it should seem may compulsion be applied to this mass of *material* stock, than to the *personal* stock. In the case of the vessel, unless by accident, as per Art. 18, upon no more than one party will the burthen fall: viz. the individual or the partnership to whom the vessel belongs; and, in that case, supposing the money obtainable, *compensation* may be rendered exactly adequate: while, of that same vessel, the crew may amount to *dozens* or to *scores*; and, on the part of each of them, the burthen of *personal service*, under the sufferings and perils of warfare, may, to an indefinable degree, be different and greater.

Instructional.

Art. 18. Under this head, not inconsiderable is the difference liable to arise out of the circumstance of the vessel in respect of *loading*. If it be waiting for a freight, and not under any engagement for that purpose,—then is the case a simple one, as above. Not so, if any such engagement has place: still less, if at the time of *prehension*, the vessel is already laden: in which case, there will be the *certain* expense of *unloading*, with the loss of *time*, and the *uncertainty* in respect of *time* and *practicability* as to the obtainment of the use of another equally fit vessel for the same purpose. Eminent is the uncertainty in which, in this case, by the unchangeable nature of the case, the *quantum* of the *damage*, in the shape of *consequential* damage, will frequently be involved: and, in this case, in addition to the owner of the vessel, another party, or any number of parties, damnified, that is to say, in the character of *freighters*, may have place.

Instructional.

Art. 19. X. Subject-matter the *tenth*. Notification timely and appropriative. For *diminishing*, and even to a considerable extent *doing away* altogether, the sense of suffering

from compulsion,—in the case of transference of seafaring persons from *private unwarlike* to *public warlike* service, as above,—it will be the care of the Legislature to apply to this case the *timely-notification principle.*

Mode of application, suppose the following: an enactment that, exceptions excepted, no person shall, by any owner or commander of a private vessel, be hired for the service thereof, or received therein, without signature of *a written contract* (a blank form for which will be annexed) establishing the eventual obligation to serve in the *government navy*, if, and as often as, so required.

Instructional.

ART. 20. Exemplars, as per Ch. viii. PRIME MINISTERS, Section 10, *Registration System*, to be delivered: one, at an appropriate *register office*, belonging to the port at which, if a national port, the vessel is stationed at the time: if a foreign port, or at sea, then at the first national port thereafter entered: and, in any case, one to the *register office* of the *navy minister:* others to any such *other* places of deposit as local circumstances may have indicated.

Instructional. Expositive. Exemplificational.

ART. 21. Of exceptions, which, in this case, may require to be made, examples are the following:

1. A landsman *working his passage*, as the phrase is: an individual who, not being accustomed to the sea,—to save the money expense of payment for his passage, bestows, in lieu of it, his labour in the navigation of the ship.

2. A foreigner, who, on being interrogated, declares the fact of his being a foreigner, together with his intention of not being subjected to this same eventual obligation. On this occasion, it will be made the duty of the commander of the ship to put the questions, and together with the answers, cause entry of it in the ship's books. A blank form for this purpose will of course be provided.

Instructional.

ART. 22. Added to the *locatee's* exemplar of the copy of the contract will, in this case, be a printed exemplar of so much of the *Navy Code* as he has any interest in being acquainted with: including every enactment by which his condition, whether immediate or future contingent, in the *sea stipendiary*, or say *Government Navy* service, is affected.

Instructional.

ART. 23. Inserted moreover in the instrument of contract, will be a clause, having for its object—the securing, at all times, for the benefit of the public service, the *means* of *communication* with the individual: in which *means* will be included the means of knowing at all times,—if his condition be stationary, at what place: if itinerant, in what *vessel*, and on what *voyage*. As to this matter, see the *Procedure Code*, Ch. x. Section 3.

Instructional.

ART. 24. To the Legislature it will belong to consider and settle with itself—whether, in consideration of the hardship attached to this eventual obligation, *remuneration* in any and what shape receivable at the time, shall be attached to the service performed by the individual's entrance into such contract, as above.

Instructional. Ratiocinative.

ART. 25. By no other consideration than that of the impracticability of otherwise obtaining a sufficiency of men for this branch of the military service, will the course taken on this occasion be, it is supposed, determined.

Reason. Suppose a *bounty given*,—persons, in any number, intending at the time to quit for ever the territory of the State in question, in such sort as not to be thenceforth in effect subject to its laws, might receive the bounty; and thereafter either not serve at all according to the contract, or, at a time anterior to the earliest at which the need of their service for Government account could have place, cease to serve, and withdraw themselves out of the service. Principle concerned, the *expense-minimizing.*

Instructional. Ratiocinative.

ART. 26. As to the sense of *hardship*, and the *discontentment* thence resulting,—in the instance of the individual thus compulsorily engaged, the nature of the case precludes the possibility of putting a complete exclusion on it. At the time of entrance into this occupation in the *private* service,—the degree of eventual hardship, in the event of the compulsory transference, will, in the mind of each individual, be inversely as the apparent probability of the result at that time: and, should that probability appear small, the call, whenever it happens, will, in spite of the original warning and consequent preparation, unavoidably, if at that time the service is disagreeable in his eyes, produce in a correspondent degree the perception of *hardship*, with the correspondent *sufferance.*

Instructional. Ratiocinative.

ART. 27. Thus far, that is to say so far as regards the functionaries themselves,—the evil is an unavoidable one. But an evil distinct from this perception is, in the breasts of persons at large, members of the same community, the *idea* of the above hardship, accompanied with a pain of *sympathy*, and thence on the score of injustice and want of due sympathy on the part of the Government, a correspondent sentiment of antipathy on their part, as towards that same Government. But by the care taken thus to obviate, as above, and lessen as far as possible, this same hardship, the con-

ception of injustice will, it should seem, be pretty generally excluded.

Instructional.

Art. 28. Note that, in the shape of provision for *wounds, disablement, superannuation, widowhood*, and *orphanage,—remuneration*, if any, in the shape of *bounty* on entrance, will not be exposed to the original fraud in Art. 24 indicated: for, only by *actually serving* according to the engagement, can the claim of the individual to the remuneration be, in any of those cases, established. But as to the question—whether, in those cases respectively, such provision shall be made,—individuals, voluntarily or involuntarily, entering into the Government service in the first instance, and individuals entering in like manner from private service into Government service, stand, it should seem, on the same footing.

Instructional.

Art. 29. In relation to the sea-service, comparison had with the land service,—in a particular degree important is the consideration, that as contentment is increased, need of remuneration, whether continuous or once for all, on voluntary enlistment from the radical to the stipendiary branch, is diminished. Circumstance in which this particular degree of importance has its *efficient cause*—superior difficulty of securing appropriate notoriety to *oppressions exercised*. Thence the importance of arrangements conducive to that end; as to which see Section 17, *Shipboard Oppression obviated*.

Instructional.

Art. 30. In speaking of the *radical* branch of the Sea Defensive Force, mention is made, to wit, per Arts. 13, 15, 21, of the possible eventual necessity of compulsory transference from the radical *personal* stock to the stipendiary *personal* stock. For this purpose, arrangements for securing eventual forthcomingness on the part of the individuals in *private* service, with the maximum of *promptitude*, will be necessary. To the obtaining of forthcomingness on the part of each individual, necessary to the constituted authorities is, the knowledge of three distinguishable matters of fact.

These are—1. His existence.

2. His being in a state fit for service.

3. The *place* at which, and *means* by which, at the *time* desired, a mandate for his attendance will reach him, in such sort as to present itself to his mind.

Instructional.

Art. 31. Necessary again to these purposes is appropriate *registration*. As to the heads under which, for this purpose, the matter of the information will require to be entered, they will be found to be of the number of those which have for their purpose the minimization of *ship-board oppression*: to the section on that subject (Section 17) they are accordingly posted off.

Instructional.

Art. 32. Applied to the *Radical* branch of the Sea Defensive Force, *registration* has *four* distinguishable purposes. Interests more particularly provided for and served—in the *three first*, that of the *public*: in the *fourth*, those of the individual functionaries. Denominations, these which follow. These may be thus denominated:

I. For *public* interest.

1. *Financial*, to wit, for the extraction of the contributions assessed on goods imported and exported.

2. *Commercial*: for bringing to view the effects produced on the aggregate value of those same imports and exports, by the arrangements made from time to time, whether for the maximization of this same value, or for the extraction of these same contributions of the Sea Defensive Force stock, personal and real together; to wit, by enlistment voluntary, or in default of voluntary, compulsory, as the exigency may require.

3. *Defensive*: for ensuring, to the several amounts, at the several times necessary, the transference of the necessary quantity.

II. For the interests of the *individual* functionaries—to wit, as well in the private as in the stipendiary sea service.

4. *Oppression obviating*—as to which, see Section 17.

Instructional.

Art. 33. On the occasion of the distinction between the land and the sea branch of the Defensive Force,—among the subjects for the consideration of the Legislature, will be the question—how far the nature of the case requires that a distinction should be kept up between the functionaries of the one branch and those of the other.

Instructional.

Art. 34. In particular.

1. As to the system of *exercises*, whether, and how far, to the functionaries belonging to each branch, might, at different times, be given the exercises more particularly belonging to those of the other.

2. Whether, and how far, the system of *grades* which at present has place in the one, might have place in the other.

Instructional. Exemplificational.

Art. 35. In the English service, those military functionaries, in whose exercises the land and the sea exercises are thus combined,—in a word, whose system of exercises is *amphibious*—constitute but a small portion of the whole, and are distinguished by a special *denomination*, to wit, that of *Marines*: a small body being allotted to every ship. (In the

British service, the ordinary number is in the proportion of one to each gun in the ship.)

Instructional. Exemplificational.

Art. 36. In the French service, a plan has recently been adopted, having for its principle the minimization of the *distinction:* the maximization of the *union.*—See Art. 4.

Instructional. Ratiocinative.

Art. 37. Consideration had of the general superiority of the maritime branch of the defensive force in England, as compared with that of France, a natural inference, on the part of the government of any other nation, might be—that the reason of the case is on the side of English practice. But, by whosoever considers the difference between the forms of government in the two nations, this inference will not be seen to have any substantial ground. France, since the establishment of the Charter, possesses a constitution, which, how unapt soever when compared with that of a representative democracy, is not only a *really-existing constitution*, but one which has in it some seeds of melioration: whereas, in England, the constitution, *matchless* as it is and may well be styled, being a mere creature of the imagination, not existing anywhere in any determinate form of words, and the practice of government in a state of constant deterioration,—what there is of melioration being, on the part of Government, the result not of design but negligence—no superiority of aptitude, on the part of the French plan as above, would, by force of example, suffice to produce in England any considerable alteration in the plan at present pursued.

Instructional.

Art. 38. In England two circumstances have place, either of which would suffice to render any such considerable improvement hopeless. One is, the horror of change, by any other instrument or efficient cause than the *secret* operation of *arbitrary* conduct on the part of the *constituted authorities.* For, in this or that particular department, suppose a change introduced;—and this, in how high soever a degree beneficial, and extensively recognised as being so;—and this too, even without detriment to any particular interest;—still, it is on the ground of the *greatest-happiness principle* that it would have to be proposed and advocated: on the ground of the *greatest-happiness principle,* to the exclusion of, or at any rate in preference to, the *imitation principle,* and the *custom-pursuing principle.* But suppose the habit of reference and appeal to the greatest-happiness principle thus established; it would of course, with more or less frequency, be applied to cases, in which the advancement of the public interest would necessitate this or that sacrifice, to a greater or less degree, on the part of particular and sinister interests, to wit, those of the ruling *one* and the sub-ruling *few*—the advancement of which, by the sacrifice of the general interest, constitutes, in the country in question, the only *actual* end of government. Hence it is that a maxim, on the establishment of which deliberate reflection concurs with imbecility and inaptitude in respect of all the several branches of appropriate aptitude—moral, intellectual and active—is *that* which prescribes the *exclusion of all change:* the inexorable preservation of abuse in all its forms, the most absurd and maleficent not excepted.

Instructional. Ratiocinative.

Art. 39. Another circumstance, sufficient of itself to put an exclusion upon the inference in question, is that, in this case as in every other, no change beneficial to the general interest could be effected, without the consequence being, that to the several particular and sinister interests concerned, detriment, in some shape and degree or other, would, with more or less reason, be apprehended: and, it being a maxim, as evidenced by unvarying practice, that on each occasion the greatest general interest shall give way to every the smallest particular interest on the part of the aggregate of the ruling and influential few,—this maxim would, on this occasion in particular, suffice to put an exclusion upon the change in question, in how high a degree soever beneficial to the general interest.

Instructional. Exemplificative.

Art. 40. Note here—that, by the change in question, three distinguishable sub-branches of service would, in some way or other, be affected: the *land*-service: the *sea*-service: and the *amphibious*-service, termed that of the *marines;* by the functionaries at the head of each, apprehension would hence be entertained, of seeing the value of their *patronage* in some degree lessened. By this apprehension the change would be rendered unendurable: unendurable to *them*, and of course to all those *connected* with them by the common ties of particular and sinister interests, as above.

Instructional. Ratiocinative.

Art. 41. Even if the branch of inaptitude, correspondent and opposite to the *moral* branch of appropriate aptitude, as above, did not suffice to the production of this effect,—those which correspond to the intellectual and active branches would, of themselves, be sufficient. In the case of the *land-service*, by the habit of locating in the situation of commander-in-chief in this sub-department a near relation of the monarch,* the want of motives adequate to

* It will be observed that the practice, since the time when this was written, (and when the Duke of York commanded in chief,) has not been amenable to this censure.—*Ed.*

the production of the necessary labour of mind suffices to put an effectual exclusion upon any tolerably adequate idea of appropriate intellectual and active aptitude. Experience in the *military* branch of the service—experience, with or without success—experience in this branch alone, without any experience in, or aptitude in relation to, the *civil* branch, or in relation to any official or other situation, requiring mental labour—has been sufficient. Under matchless constitution, the assumption uniformly acted upon is—that the higher the degree in which the objects of general desire taken together are possessed by the individual, the higher is in all points taken together the degree of his appropriate aptitude: while, idiosyncrasy out of the question, the truth is—*the very reverse:* for, of all such aptitude the degree is in proportion to the quantity of time and labour employed in acquiring it; and the greater the amount of the objects of general desire a man is in possession of, the less is his sensibility to these motives, by the force of which alone can the employment of time and labour be produced.

Instructional. Exemplificational.

Art. 42. For the direction in chief of the business of the sea-service subdepartment,—no appropriate *experience* whatsoever even in the military line of that same service, has for this long time been regarded as necessary, or, till in a recent single and short-lived instance, had place in practice: a functionary in whose instance experience in the military line has had place,—and an individual in whose instance not any the slightest presumption of appropriate aptitude with reference to any function whatsoever, has had place,—have been located with the same indifference.

Instructional. Ratiocinative.

Art. 43. In preference to this indifference, an arrangement confining the choice to an individual taken from the college of *physicians*, or from that of *surgeons*, would be a real, an important and incontestible improvement. For without a long continued course of mental labour applied to branches of art and science, (chemistry and mechanics to wit,) of which application is made in the military line of this branch of service,—scarcely can any individual even find his way into either of those colleges: whereas, in the official situation here in question, instances have not been wanting of men not known to be possessed of any the least acquaintance with any branch of useful knowledge whatsoever,—such excepted, and *that* in such degree, as men of opulence not destined for any profession cannot escape from being more or less superficially acquainted with.

Instructional. Ratiocinative.

Art. 44. The declared situation has been rendered an appendage to an undeclared function: namely, of applying to the purposes of Parliamentary corruption, the patronage of one of the three recently united kingdoms. For, as of late has been over and over again demonstrated,—without so much as one act of the will on the part of the corruptor, the existence of a quantity of the matter of property applicable by him to the purpose of corruption, is abundantly sufficient to produce the effect.

Thus, in a certain mode of fishing,—when the fisherman has baited his hooks, and thrown them into the water, no need has he of any labour other than that of returning at the end of a competent interval of time, to take the fish off the hooks, and stow them in his basket: for the skill of the *fly-fisher*, this same mode of political fishing presents not any demand.

Instructional. Exemplificational.

Art. 45. In a statement recently made in the *French Chamber of Deputies*, by the Minister of the *Sea Defensive Force* subdepartment—in French practice, contrasted with a recent proceeding in the English House of Commons, an incontestably conclusive proof may be seen of the utter inaptitude of the practice of Government in England, as to the serving as a model of imitation to other nations; of the *inaptitude* in England,—and at the same time of the *aptitude, comparative* at least, on the part of the practice of Government in France.

Instructional. Exemplificational.

Art. 46. Of the French statement, the substance may be seen in the extract following, from a speech of M. Hyde de Neuville, as reported in the *Morning Chronicle* of the 8th of July, 1818.

"We *have* 30 general officers; we *had* 64 in 1787. According to the statements which have been already given,—if *England* were to trace them in the same proportion, she *would have* about 30—she *has* actually 215; France *has* 80 captains of ships of the line,—in 1787 she *had* 123; England, at the same rate, *ought to have*, at most 220—she *has had* 350. *We* have 120 captains of frigates: *England* had 868 commanders, who are equivalent. *Our lieutenants de vaisseaux and enseignes* together, are 728: *England* has 3,710 lieutenants, and 543 masters."

Allowance made for controvertible points—on the one hand in relation to numbers requisite under each head, on the other hand for difference in the value of monies as between the two countries,—from these *data*, an estimate not altogether uninstructive might be made of the quantity of money, in this subdepartment alone, under "*Matchless Constitution*" constantly applied to the purposes of waste and corruption, at the expense of the indigent subject many, by and for the benefit of the opulent and ruling few.

Instructional. Exemplificational.

ART. 47. So much for France. Of the principles pursued in English practice, the manifestation here in question is as follows:

Every now and then, for the purpose of blinding the subject many, and preventing them from seeing that the maximization of waste and depredation is of the number of the ends uniformly pursued by those on whom everything depends,—a *Finance Committee* is appointed by the House of Commons; declared purpose, that of proposing reductions in the aggregate amount of the public expenditure. Of this Committee, a majority is on every occasion composed of individuals, in relation to whom the most perfect assurance has place that no considerable reduction will ever be consented to by them.

In the session of 1828, a Committee of the sort was appointed: at the close of the session, they had made four reports. In one of these reports, one single office (that of *Lieutenant-General*) belonging to the *Ordnance*—(an under sub-department, the business of which is conjunctly subservient to each of the two sub-departments, the Army and the Navy, belonging to the Defensive Force)—is stated as needless, and on that account requiring to be suppressed. On being brought before the House at large, this proposition was set aside by 204 votes to 95.

From this one example, what probability has place as to any such reduction as that held up to the view of Europe, by the statement of the French Minister as above,—may be estimated without much difficulty.

SECTION XVII.*

Ship-board Oppression obviated.

Instructional.

ART. 1. In the hands of a commanding officer,—in the Radical branch of the *Sea*-service, the power needful (it will have been seen) has place in quantity much greater than in the Radical branch of the *Land*-service: so likewise has the power commonly exercised. But, coupled with the sense of the need of the *apt* exercise, the facilities which the nature of the case affords for the *abusive* exercise of this same power, have been known to render the abusive exercise extensive, to a degree which calls upon the legislature for a corresponding degree of attention and endeavour employed in obviating it.

1. As to the *need*. Necessary—not only to the purpose of the service itself—that is to say, to the safe custody and appropriate conveyance of the cargo, but to the preservation of the lives of all on board, is the exactest subordination,—and, in time of danger, the most unqualified obedience,—on the part of all on board, whosoever *they* may be, to the orders of the person by whom the operations are directed, whatsoever the denomination attached to such his situation may be.

2. As to the *fact:* that is to say, the actual state of things. In consequence of the narrowness of the limits within which the abode of all on board is contained, not one of them all, so long as it continues to be their abode, can by possibility escape from out of the reach of the irresistible power of the all-directing functionary, so long as he continues in the exercise of such his function.

Thus then it is—that, for the sake of the *individuals* concerned, a demand has place for all such arrangements as may be found necessary to the securing, as far as may be, against the abuse of this power, all such individuals as, by their particular situation, stand exposed to it.

Thus much for the interests of the *individuals:* and it will be seen that, by the arrangements necessary to provide for these same particular interests, services will at the same time be rendered to the public interest, in the several ways mentioned in the last preceding section—Section xvi. Art. 32.

Instructional.

ART. 2. Under the legislature, and in conformity to its ordinances, the authority provided for the repression of *abuse*, in whatever shapes and situations liable to have place, is the *judicial*. On the present occasion, the arrangements required are—such by which apposite application shall be made of the general authority of the Judge, to the peculiar or *differential* circumstances of this particular case.

Instructional.

ART. 3. By the arrangements to which expression is given in Ch. xii. JUDICIARY COLLECTIVELY, Section 6, *Fields of Service*, and Section 25, *Attendance*, provision is made, in a general way, for the *uninterrupted* attendance of *a* Judge,—and, in case of need, Judges, acting singly, in number *more* than one, in the several *spots* regarded as requisite; and accordingly, in every sea-port belonging to the state. The arrangements which, on the present occasion, require to be brought to view, are—the particular arrangements requisite, for adapting the general powers so given, and obligations so established, to the particular circumstances of the present case.

Instructional.

ART. 4. These peculiar arrangements will be seen to be referable to one or other of two *heads:* to the first, those which are employed in securing the existence and forthcomingness

* In some respects, the desiderata indicated in this section, have been supplied since it was written, by the Merchant Seamen's Act, 5 and 6 W. IV., c. 19.—*Ed.*

of adequate *evidence* of all such facts as can present a demand for the exercise of the authority of the Judge, in and in relation to a vessel on its *arrival* in port: to the next, those which provide for the regular *transference* of the Judge in person to that receptacle, as being the seat of the *possible abuse*, and the spot on which the whole of the evidence relative to it will commonly be to be found: care being taken, at the same time, effectually to obviate all such evil, as by retardation of the business of the vessel, the exercise given to the judicial power might otherwise produce.

Enactive.

Art. 5. *Seaman's General Register.* For the above purposes, in addition to whatsoever Register might be kept for exhibiting to view the state of the *stipendiary* portion of the personal stock of the Sea Defensive Force,—will be kept, under this denomination, at the seat of Government, in the office of the *Navy Minister*, a *Register* exhibiting to view the state of the *Radical* portion of this same stock: that is to say, the aggregate number of the individuals employed as seamen in any service *other* than that of *Government*.

Enactive.

Art. 6. Formed and constituted will this Register be in manner following.

Port Seaman's Register. At every port, under the care of the directing functionary of the port, will be kept a *Port Seaman's Register*, in which, at the first entrance of every person into the service of any individual, or set of individuals, in the line of sea-service,—entry of such his engagement will be made: and, for securing the making of such entry, appropriate *penalties* will be attached to the omission of it.

Enactive.

Art. 7. On one of the leaves, on the left side of the book (the right-hand leaf being employed as per Art. 11.) entry will be made of the name of the individual in question at full length, surname or surnames, and christian name or names, or what among non-Christians is equivalent, included: and in the same line therewith, in so many appropriate columns, matter under the several heads here following:

1. *Time* of *birth*, as far as known, according to his declaration; mentioning year, month, and day of the month.

2. *Place* of *birth*, as far as known; mentioning if within the territory of the state, the district, subdistrict, and bis-subdistrict.

3. Condition as to *marriage;* that is to say —bachelor, widower, or married man.

4. *Time* of *entrance;* mentioning year, month, and day of the month.

Enactive. Ratiocinative. Expositive. Exemplificational.

Art. 8. For obviating the confusion and misconception liable to be produced by the case where persons, two or more, are known by the same name,—in another column in the same line will moreover be entered a word, or figure, expressive of the place occupied by the name of the individual in question in the list of the individuals, if any such there be, before him, bearing the same name, as per this or any other Port Register. Also another word, expressive of the name of the port in which such other register is kept.

Thus, suppose Portsmouth the port, and *Peter Porter*, the name common to two individuals, whose names have been entered in the same year. In this case, *Peter Porter*, with no other addition than that of the year and *Portsmouth* the port of entry, being the designation of the one who was first entered. *Peter Porter the second*, with the addition of that same year and the port, will be the designation of the one who is next entered: and so on.

Enactive.

Art. 9. By the individual himself, in so far as able, will be written, the words expressive of his *time* of birth, *place* of birth, and *condition* in respect of *marriage:* if not, by the registrar, the individual making his mark, to which will be subjoined the words his *mark*, together with an attestation by the signature of at least one disinterested witness present at his making the same.

Enactive.

Art. 10. Of the entry thus made, *exemplars*, as per Ch. viii. Prime Minister, Section 10, *Registration System*, taken in the manifold way, will, at the same time, be disposed of as follows:—

1. Delivered to the *individual*, one.

2. Delivered to the person in *command* of the ship for which he is engaged, one.

3. Transmitted to the office of the *Navy Minister*, one. Also, delivered or transmitted to the persons or offices in question, any such *other* exemplars as the Legislature may have seen reason to ordain to be delivered.

Instructional. Enactive.

Art. 11. So much for *entrances;* follows now the mode of recordation, as applied to *exits*.

On the leaf which is on the *right* side of the book, in a line with that the contents of which have just been described, will be a set of *heads*, expressive of the mode and time of the individual's *ceasing* to be in the condition in which he was placed on entrance. Examples are as follows:—

I. Killed. Sub-heads, under this the following—1. *Day* of death.—2. *Place* of death. —3. *Persons present*, if known.—4. *Place* at which the wound, or other cause of death, was received. In case of dubiousness as to any

point, annexed will be the word *Dubious*, or the syllable *Dub*.

II. DECEASED, to wit, by *natural* death. Supposed cause of death, as per ordinary bills of mortality. Sub-heads—1. *Day* of death.—2. *Place* of death.—3. *Persons present*, if known.

III. PROMOTED. Sub-heads—1. *Condition*, or say, *situation* into which promoted.—2. *Day* on which promoted.—3. By *whom* promoted.

IV. DISLOCATED. Sub-heads, whichsoever be the *mode* of dislocation, these—1. *Day* on which.—2. *Persons* by whom. For the several modes of dislocation, see Ch. ix. MINISTERS COLLECTIVELY, Section 18, *Dislocable, how*.

In whichever mode the exit has taken place, two other *sub-heads* will in the same line be added: that is to say—1. *Name* or *names* of the informant or informants.—2. *Day* on which the information was *delivered*.

Instructional. Enactive.

ART. 12. From the information thus at the several posts obtained, and thence transmitted to the Navy Minister's Office, within [ ] days after the last day of every solar year, the Registrar will have drawn up and entered—an aggregate account of the whole seafaring population in its several classes and grades: the stipendiaries and the radical, each in a separate book: to which account, along with the other public accounts, appropriate publication will be given, as per Ch. viii. PRIME MINISTER, Section 11, *Publication System*.

Instructional. Enactive.

ART. 13. *Exceptions excepted*, as per Art. 26, after the institution of this Register no navigable vessel belonging to this State, will be suffered to depart from any port belonging to this State,—until, on inspection made by an appropriate functionary, account has been taken, and delivered in, of every one of the individuals composing the population of that same vessel: of such persons as are *therein*, *inspection* having been, at the same time, made by him: and, of all such, if any, as, though *belonging* to the population of the vessel, are *not on board* thereof at the time of inspection, as above,—an account will be taken,—by examination of the commander, and of any such other persons as may be requisite: which account will be signed by such commander, or his refusal noted.

Instructional. Enactive.

ART. 14. In such account of the whole population will be contained two separate lists: one, the list of the crew: the other that of the passengers, if any, actual or intended. In the capacity of a person belonging to the crew, no person will be suffered to depart in the vessel, unless either his name stands entered on the Register of that same port, or a certificate, as per Art. 10, of his having been entered on the Register of that same or some other port, has been inspected by such functionary as above.

Enactive.

ART. 15. If among the passengers there be any person who, his name not being on the seaman's register, nor intended so to be, has been admitted into that same vessel on condition of his contributing his services towards the working of the ship, the name and description of every such person will be entered on a separate list. Name of such list, *The Passage-Earner's List*.

Enactive.

ART. 16. Of such seamen, of whom in the port Register in question, the names are as above recorded as having at that same port made for the first time their entrance in the service,—the list, when formed, will be styled the *Seaman's Entrance List*. Distinguished, in respect of the quantity of time comprised in these same lists, there will be the *day's* list, the *week's* list, the *lunar month's* list, the *calendar month's* list, the *quarter's* list, and the *year's* list. *Entrance-man*, the name given to each individual, considered in respect of such his entrance.

Enactive.

ART. 17. For every statement made on the occasion of any examination taken as per Art. 13, the examinee will, in case of falsehood, be responsible to the same effect as if the examination had been taken in an ordinary judicatory: as to which see the *Procedure Code*, Ch. viii. Section 11.

Instructional. Enactive.

ART. 18. At the *entrance* of the vessel into any such port, the *commander* will deliver an *exemplar* of the *crew's* list and the *passenger's* list, resulting from the accounts taken, as per Art. 13, at the last port from which he took his departure. To this list will be subjoined three other lists, termed *subsidiary*, or say *supplemental* lists; namely, 1. the *missing* list; 2. the *unexpectedly-received* list, or simply the *unexpected* list; 3. the *come-and-gone* list.

In the *missing* list will be entered the names of those who, their name appearing either in the *crew's* list or in the *passenger's* list, are not, at the time of inspection, present; together with the alleged *causes* of their not being *present*, or say, their *non-appearance*.

In the *unexpectedly-received* list, will be entered the names of those who, their names not appearing either in the *crew's* list or in the *passenger's* list as above, are, at the time of the *inspection*, *present*, and appear as belonging to the number of the crew, or to the number of the passengers, as the case may be; together with the *day* of each person's reception, and the *occasion* on which, and *cause* for which, received.

In the *come-and-gone* list will be entered the names of all such who, their names not appearing on either the *crew's* list or the *passenger's*, nor they themselves appearing at the time of inspection, have spontaneously, or in consequence of examination as above, been stated as having been as above *unexpectedly* received, and so made their *entrance*, and thereafter their *exit*, as above.

Instructional.

Art. 19. Of the *capacities* in which, correspondent to the *occasions* on which, it may have happened to a person to have made his entrance into a vessel during the voyage,—that is to say otherwise than at a *port* as above,—examples are the following:

1. *Passage-earners*, as per Art. 15.

2. Persons who, in consequence of *casualties* of any kind, have obtained admittance and been *received:* for instance, persons taking refuge from *shipwreck*, from *famine*, from *enemies*, from *pirates*, from *mutineers*.

Instructional.

Art. 20. Prevention of *oppression* being here the purpose, and of *ship-board* oppression in particular,—comes now the application made of the *Appropriate Ratification principle.* Whatsoever other arrangements may to this same purpose have been made, by no possibility to any individual, on any individual occasion, can they be of any use, any further than to him, or to some one for him, their existence and purport are, at the appropriate time in question, known. Here, therefore, follow the proposed arrangements, directed to the purpose of securing the existence of the notoriety thus requisite.

Enactive.

Art. 21. At the time of the entry of the person's name on the *ship's-company's register*, —into his hands will be delivered a printed exemplar of the *Seaman's Code*, for which, antecedently to the making of the entry, he will have had to pay, at a price not exceeding the ordinary price of printed work of the same type and quantity of matter, and paper of the same sort. On a blank leaf thereof will have been inscribed his *name*, expressed as above: with a certificate of the *entry* made thereof in the *register*, as above.

Enactive.

Art. 22. In this Code will be contained, in a form as concise as the conveyance of adequate conceptions of the matter will admit, the indications following:—1. Indications of the several *wrongs*, by the infliction of which by a *superior*, *oppression* is exercised; wrongs, whether it be the *body* and thence the *mind*, the *mind alone*, the *reputation*, the *property*, the *power*, or the *condition in life*, of the individual, that is respectively affected by them: together with the *remedies* respectively provided for these same wrongs by law. 2. Indication of the *course* to be taken for conveying *information* of the wrong to the authority instituted for the *application* of those same remedies: that is to say, 1. the *antecedently preventive;* 2. the *suppressive;* 3. the *satisfactional* (including the *compensational*); 4. the *punitional*, or say *subsequentially preventive.*

Enactive.

Art. 23. On the joint responsibility of the commander of the vessel, and of the functionary on whom its departure from the port depends, a *Table* expressive of the nature of those several wrongs, and printed in *placard types*, having by the care of the Navy Minister been provided, exemplars thereof will be kept *hung up* in such parts of the vessel, and in such number, that some one or more of them cannot fail to meet, at some part of the day, the eye of every person belonging in any capacity to the population of the vessel. To take down, or in any part without lawful authority obliterate, alter, or add to any such Table, will, on the part of any person, be a punishable offence: so likewise, on the part of the *commander*, *connivance* thereat; that is to say, omission of any lawful exertion, the exercise of which depends upon him, towards causing the punishment to be inflicted.

Instructional. Ratiocinative.

Art. 24. Each man's copy of the *Code* being kept in an appropriate *case*, the preservation of it from injury may as easily be enforced and effected, as the preservation of any part of his official clothing, or any other part of his official stock. As to reading, he who is able to read it will himself read it: he who is not able, will hear it read by others who are able. To no rational being can want of willingness to be secured against oppression be rationally imputed, and, no otherwise than this means of security is afforded and profited from, can such security against oppression be enjoyed. By no person but by one whose wish it is that oppression should have place, can any provision necessary to such notoriety be opposed.

Instructional.

Art. 25. Consideration had of the amount of damage liable to be produced by *demurrage*, it will be seen that it is not of every individual instance of wrong, of which a navigable vessel has been the theatre, that, without preponderant evil in that shape, cognizance can be taken, in such sort as to give to the provisions for repression of the wrong their full execution and effect, upon the spot, with the benefit of all such relevant evidence as it has happened to the individual case to have brought into existence. But, to no inconsiderable extent, may justice be even thus administered:

and extraordinary accidents excepted, of the existence of *complaint* at least, under the appropriate head, whatsoever it may be, as per Art. 22, cognizance *may*, without any such preponderant evil, be in every individual instance taken, by an appropriate Judge: the *completion* of the mass of evidence, and the pronouncing judgment, and causing execution and effect to be accomplished, being reserved until the nearest point of time at which such consummation can be effected.

Enactive.

ART. 26. Exceptions excepted, no navigable vessel, after entrance into any port in the territory of this state, shall be suffered to depart, unless and until, before the *Judge immediate* of the place as per Ch. xiii. JUDGES IMMEDIATE, and Ch. xiv. JUDGE-DEPUTES PERMANENT, all such persons shall have made their appearance, as in and by Art. 13, are in that behalf mentioned: to the end that all *complaints* which any such person is desirous of making, of *wrong* in any shape experienced in the course of the vessel's then last voyage, may be received by him; and, if practicable without preponderant evil by reason of the delay,—a decision thereto relative will, before the departure of the vessel, have been pronounced by him, and execution and effect given to it.

Instructional.

ART. 27. On this occasion, it will be the care of the Judge that no person, who, on the entrance of the vessel into the port, was, or had been, of the number of its inmates,—whether belonging, as per Art 14, to the *Crew's list* or to the *Passenger's list*,—shall remain unheard: in such sort that, of all persons who at the time-being are, or at any time have been, on board the vessel, to no one shall the hereby intended protection of the law fail to be afforded.

Instructional.

ART. 28. To this end, he will take the *examination* of the persons in question, either on board the vessel, or in the justice-chamber, as the considerations of despatch and general convenience may determine; and either all at one and the same time, or some at one time, some at another, as the circumstances may require.

Enactive. Instructional.

ART. 29. For the purpose of such examination, the Judge principal, or some depute of his, together with the Registrar principal or some depute of his, will with all practicable promptitude repair to the vessel, and take possession of the principal cabin, excluding therefrom immediately, in the first instance, every other person. This done, the Registrar, taking each person according to the order in which his name stands in the aggregate *Population list*, or in such other order as shall have been prescribed by the Judge, will, with his own voice, or through the intervention of any other, call for and effect the requisite appearance.

Instructional.

ART. 30. Having regard to the sinister influence of fear on testimony, the Judge will, if he sees reason, give a secret and separate hearing to every one of any such number of the persons in question as he may see reason thus to distinguish; applying the concealment as well to the *purpose* of the examination,—and as far as may be, to the *person* of the examinee,—as to the *result* of it.

Instructional.

ART. 31. From the evidentiary matter elicited by means of any such examinations as happen, as above, to have been performed *in secret*, the Judge will deduce and frame any such questions, as the case may require to be put on the occasion of any subsequent *public* examination.

Instructional.

ART. 32. It will be the care of the Judge so to order matters, that any such delay, vexation, and expense, as the affording this security against oppression may necessitate, shall, on every occasion, be minimized.

Enactive.

ART. 33. To any person, whose name stands in the *Seaman's Register*, belongs the right of addressing to the Registrar of the Justice Minister, or to the Registrar of the Navy Minister, *letters of complaint*, stating, as well as he is able, any wrong alleged to have been sustained by him: with indication of such his name, and of the persons by whose *evidence* it may be proved, and of the *ports* or other places at which the *elicitation* of the evidence or any part of it, might with advantage be performed by the Judge at the judicatory there situated.

Enactive.

ART. 34. Of such letter, immediately on receipt thereof, the Registrar will transmit a *manifold exemplar* to every port in the territory of the State: to the end that, at whichsoever port the vessel in question, or the alleged *oppressor*, or the alleged *oppressee*, or any other person alleged to be capable of furnishing appropriate *evidence*, may arrive,—the Judge of the port, as above, may take his examination, and to the purpose of *decretion* and eventual *execution*, carry on such appropriate proceedings as the circumstances of the individual case will admit.

Enactive. Instructional.

ART. 35. In the *Seaman's Code* will be con-

tained a printed *formula* for such letter of complaint; stating the name or names of the act or acts of alleged oppression complained of, as they appear in the *Table of Offences;* together with reference to the articles in and by which they are constituted offences: moreover, the *place* or places, and *time* or times, as near as can be recollected, and the *person* or persons from whom, in quality of *evidence-holders*, evidence—personal or *real*, or both,—may, it is supposed, be elicited. In a word, it will be little more than an ordinary *demand-paper;* for a *formula* of which, adapted to every species of offence, see the *Procedure Code*, Ch. xii. Section 4.

Enactive. Instructional.

Art. 36. To every such proposed complainant, warning will, at the same time, be given —that in case of *ungrounded* complaint, he will be *satisfactionally* and *punitionally* responsible: to wit, according as the falsehood is accompanied by *evil consciousness*, or is the result of *culpable inattention*, or of *blameless error:* and with the information—that if, by accident, the use of the *formula* should be placed out of his power, his complaint, so far as intelligible, will be attended to and transmitted: but that, by every word of needless matter contained in it, its chance of being found intelligible will be diminished.

Instructional. Ratiocinative.

Art. 37. Responsibility on the part of every individual, as towards every individual, being thus assured, the probability appears to be that, in this way, the number of wrongs, real and erroneously supposed together, will, in comparison with the hitherto ordinary state of the case, be in a large proportion reduced.

Instructional. Exemplificational.

Art. 38. Turn now to England: look at its technical procedure. For an example of the sort of protection afforded by it against *shipboard oppression*,—behold the result, in the autobiography of a man of character, himself a declared percipient witness of the several facts.* By the master of a vessel in *private service*, on the bodies of divers privates, seamen under his command, an enormous and long continued course of cruelty carried on. On prosecution, —matter of the defence, composed of allegation made of theft as having been committed by the prosecutors. Mode of prosecution, by *indictment*. The commander acquitted: acquitted, because such had been the behaviour of the witnesses: the witnesses themselves, not punished, by any competent, or supposed competent judicatory: not punished—otherwise than by that same course of arbitrary cruelty, carried on, without any the least proof, to fix the crime upon any one of the individuals, upon whom it turned out afterwards that they had been guilty of it. Turn now and behold the *costs*. One horribly lacerated and tortured to make him confess himself guilty of another's offence, the real author of which was afterwards found to be a man who had assisted in the torture, (p. 481.) With "nearly the whole savings of his last two years' labours," the defendant was about to "return to his wife and family."—(p. 484.) Stopped by the prosecution, he is, though acquitted, stripped by it of all these savings, and sent out of Court absolutely pennyless.

So much for the acquitted defendant, undoubted author of so much groundless cruelty. Look now to the *prosecutors*. By a class of licensed and authorized depredators, too learned to be ever punishable, (page 485,) behold these unlicensed ones, with their blameless companions, *divested*, in the figurative sense, of whatever else they could call their own. Such was the result of a single suit in one of the least expensive modes: purse employed in the prosecution, a *common* purse.

In that same suit, had the conduct of all of them been ever so blameless, not a shilling would any one of them have received from that suit, or any other, in compensation of the torments so endured. The *purse* employed in the prosecution, let it not be forgotten—a *common* purse. In the situation which was theirs, the situation of a common seaman, the situation constantly occupied by so many myriads,—think what possibility of relief there could have been for any one whose purse had no other for its support.

The English Judge, the fee-fed English Judge, is the surgeon who, when a wound is brought to him to dress, instead of *lint*, applies poison to it. This surgeon is a fictitious character. The Judge, every English Chief Judge who goes by that name, a too real one: and by a statute of 1826,—lest the poison should not be strong enough, and relief from oppression not sufficiently near to impossible,—King, Lords, and Commons, have given to these same Judges the power of making for ever unlimited addition to the fees exacted by them, for their own benefit, through the hands of their own creatures, on pretence of contributing to the administration of justice.

Not long after the enactment of this law,—in a pamphlet intituled "Indications respecting Lord Eldon,"† this choice fruit of *matchless constitution* was endeavoured to be brought to view by the author of these pages. Down to this day, (22d Sept. 1828,) any more than in the course of its passage, has any one of the self-styled representatives of the people pre-

* Three Years' Adventures of a Minor, &c. Vol. ii. p. 484, by *William Butterworth, Esq.*, London, 8vo, 1808.

† In vol. v. of this collection.

vailed upon himself to utter so much as a syllable in disapprobation of it?

Instructional.

ART. 39. In reviewing the contents of this and the last preceding sections, the Legislature will consider, whether in any, and if in any, in what instances,—the arrangements herein and therein proposed, in relation to the *radical* branch, may be applicable with advantage to the *stipendiary* branch; and in what instances the arrangements so proposed in relation to the *sea-service* may be applicable, with advantage, to the *land-service.*

SECTION XVIII.

Collateral Employments.

Expositive.

ART. 1. By collateral employments *at large*, understand such as are so with reference to, and are by this name distinguished from, others, considered as the employments *mainly*, or say *principally*, carried on by persons belonging to the class in question.

On the present occasion, the employments considered as the *main*, or say *principal* employments, are those which are termed *military*, and consist in the use of arms, offensive and defensive, whether in actual combat against an enemy, or in the performance of any such manipulations or evolutions as are performed, for the purpose of learning how to employ such arms against an enemy with most advantage.

By collateral employments for military men, understand any such non-military employments, as are considered as capable of being performed with advantage to the state, by men belonging to the stipendiary branch of the Defensive Force, under the direction of the Army and Navy Ministers respectively; those Ministers acting on the occasion under the direction of the Prime Minister.

Expositive.

ART. 2. Neither to the *radical* branch of the *Land* Defensive Force, nor to that of the *Sea* Defensive Force, has that which is here said of *collateral employments* any application.

Instructional.

ART. 3. Leading principles serving as sources of rules applicable to this subject, are the following:—

1. The aptitude-maximizing.
2. The contentment-maximizing.
3. (Incidentally) The inequality-minimizing.
4. The expense-minimizing.

Instructional. Expositive.

ART. 4. In the stipendiary force, what is *necessary* is—that of each individual functionary, the whole time should be at all times at the command of Government: what is *not* necessary is, that at all times it should be actually employed either in actual war service or in war exercises. Here then, of that which is not necessary for either of these two purposes, is composed the quantity of surplus time, capable of being applied to employments at large, which, with reference to the main and characteristic employments, may be termed collateral.

To the *hours* in the day bears reference the *time-occupying* principle, as per Section 2, *Leading Principles*, Art. 37: the occupations themselves, though considered as being allotted to military men acting under military discipline, being themselves other than military. To *entire days* in the year, and in any number, bear reference the employments here spoken of under the name of *collateral employments.* By the very nature of the service, it is rendered indispensable, that, during a certain season, throughout all the days in the year, as well as throughout all the hours in a day, the occupations of all subordinates should be at the absolute disposal of their respective superordinates. This season is that of *actual war*, with the addition of any other portion of time during which, on the part of the Government, the apprehension of *nearly-impending* war has place.

Instructional. Expositive.

ART. 5. In and during a season of profound peace, a portion, more or less considerable, of the aggregate time of the military functionaries belonging to the Defensive Force Establishment, will, without detriment to the service, be capable of being disposed of, according to either of two systems—the *furlough-allowing* system, and the *employment-allotting* system.

By the furlough-allowing system, or say the *furlough* system, understand *that*, according to which the military functionaries in question are allowed to betake themselves to non-military employments, on their own account respectively.

By the employment-allotting system, or say the *employment* system, understand *that*, according to which employment is given by Government to the days of the military functionaries in question, in the same manner as in time of war; during which time they are occupied in employments other than military, though it is under military discipline that these same employments are carried on.

Instructional. Exemplificative.

ART. 6. By several governments the *furlough* system has been customarily pursued.

1. In the Prussian service, during three-fourths of the year, permission has been habitually given to soldiers in general to betake

themselves to employments non-military, on their own account respectively: and this, without any special regard to vicinity or remoteness, with reference to the places at which the corps they respectively belong to were stationed.

2. So in the service of the Helvetic Confederacy, during about two-thirds of the year.

In neither of these cases do the functionaries thus licensed receive (it is believed) any pay at the charge of government; or if any, not so much do they receive at this time as at other times: Principle, the *expense-minimizing*.

Instructional. Exemplificational.

Art. 7. In English practice, in some corps, the privates have been customarily permitted thus to betake themselves to employments *non-military*, on their own account. But, as to pay, instead of being made—the whole or any part of it—to cease, it has been supposed to find its way into the pocket of this or that superordinate. Principle, not as above, the expense-minimizing, but the *expense-maximizing:* this being the principle which, under matchless constitution, is, in every department, and every subdepartment, the all-ruling principle: the aggregate of the expense constituting so much profit in the conjunct hands of the *ruling one* and the *sub-ruling few*.

Instructional.

Art. 8. As to collateral employments, that which in relation to them is desirable is—that in this as in other cases, those should be chosen, if any such there be, by the practice and pursuit of which appropriate aptitude, with reference to the main or say principal employment, promises to be kept up and increased, or at least not diminished.

Rule. For collateral employments, other considerations being equal, choose in preference such as, with reference to the main employment, are *aptitude-increasing* and *subsidiary:* the practice of the collateral occupation contributing to make them more and more fit for the performance of the main one.

Instructional. Expositive. Exemplificational.

Art. 9. Of such appropriate-aptitude-increasing employments, conducive to the formation, preservation, and increase of the qualities of intrepidity and activity, as per Section 10, *Remuneration*, Art. 24, examples are the following:

Example 1. Occasional employment in acting in aid of the *Preventive-Service* Establishment; more particularly on the occasion of the application made of it to the prevention or suppression of delinquency accompanied with violence: as to which, see Ch. xi. Ministers severally, Section 5, *Preventive-Service Minister*.

Instructional.

Art. 10. Note, however, that only occasionally and by accident, can this species of collateral employment be furnished. At all times, for the service of that subdepartment as of that of every other, functionaries must be kept provided, in number sufficient for *ordinary* occasions. Only on this or that *extraordinary* occasion, can there be demand or use for auxiliary force from this quarter or any other: and it may be that no such extraordinary occasion shall ever have place. The extraordinary occasion will be — when, by some extraordinary occurrence, the standing provision made has been rendered inadequate.

Instructional. Exemplificational.

Art. 11. Example 2. Preventive service, specially applied to the collecting of the Revenue, under the authority of the Finance Minister: to wit, in cases where the number of co-offenders is liable to be so great as to produce a demand for aid from an armed force. So far as any defensive force functionaries are thus employed, the Army or Navy Minister's subdepartment, as the case may be, lends its aid to the *Preventive-Service* Minister's subdepartment, and the Finance Minister's subdepartment, one or both.

Instructional. Exemplificational.

Art. 12. Example 3. Service in the character of *Prehensor*, on the execution of a *Prehension mandate* issued by a *Judge*, for the prehension or say *arrestation* of individuals, on the occasion, and for the purpose, of judicial procedure: as to which see Ch. xxviii. Prehensors, and Procedure Code, *Prehension*, Ch. xxii.

Instructional. Exemplificational.

Art. 13. Of collateral employments, adapted to the situation of land stipendiary defensive-force functionaries, and to the keeping in exercise the qualities in Section 10, *Remuneration*, Art. 24 mentioned, that of intrepidity excepted,—examples are the following:

I. Employments consisting in the performance of operations actually contributory to the service of the defensive-force subdepartment, though without danger to the operator.

1. Keeping on foot, or improving or enlarging, *fortifications* of fortified *towns* or *ports*.

2. Keeping on foot, or improving or enlarging, by land, or water, or both, *roads* for military purposes.

3. Keeping on foot, or improving or enlarging, *naval works* of the stationary kind, such as ports, breakwaters, slips for the construction of navigable vessels, docks for fitting out and repairing them.

II. Employments consisting in the performance of operations on subject-matters of the

same kinds as the above, but applied to other purposes.

4. Roads—land roads.

5. Water roads, including purely natural, to wit, rivers and lakes; artificial, to wit, canals.

6. Bridges and underground tunnels.

7. Dykes and embankments.

8. Water-courses.

Instructional.

ART. 14. Preferable, of course, are such collateral employments as give employment to *officers* as well as privates, to such as give employment to privates, but not to officers. Of this last sort are some of those exemplified in Art. 13, with the exception of the officers of the engineer *armature class*, in small numbers for general superintendence.

Instructional.

ART. 15. Note, that to defensive-force *land*-service, defensive-force *sea*-service is less near of kin than *Preventive Service* as above. Not but that it might be of use that, as in the case of the so called *marine*-armature class, the functionaries belonging to each of the two branches should be made qualified for, and applicable upon occasion to, the service of the others. Moreover, in virtue of the qualities common to both, (as per Section 10, *Remuneration*, Art. 24,) sea-service functionaries have in fact been every now and then employed in the land-service, even without the aid of any of the land-service functionaries, and yet with conspicuous success. But, without the aid of sea functionaries, never could the land functionaries, with any the least chance of success, be employed in sea-service. True it is—that land-army manipulation exercises are *not* altogether incapable of being performed at sea: but land evolution exercises *are;* room for these being altogether wanting. In sea-service the distinctive operations, and these the only ones, are of the *manipulation* class: and with a few exceptions scarcely worth mentioning, these are incapable of being performed on land.

Instructional.

ART. 16. In a certain state of things, through the instrumentality of collateral employments as above,—the stipendiary land defensive-force service will be seen to be, by means of the discipline which is inseparable from it, capable of being rendered conducive to habits of *labour*, to *profit-seeking* industry, and thence to *contentment* and moral deportment. *Place*, where the heat of the climate, and the facility of obtaining land with rude produce on it sufficient for subsistence, have concurred in producing an aversion to labour: *time*, when the formation of new states, and the struggles almost inseparable from that process, have concurred in producing an exclusive demand for service in the two branches—one or other of them, or both—of the defensive-force service; especially that of which dry land is the theatre.

In this state of things, if, as in France and other old established states, the whole male population, appropriate exceptions excepted, are, by what is called *conscription*, aggregated to the army service, though not, as in those cases, for a small number of years, but for a large number, say from twelve to twenty, or upwards, and in the course of that time occupied in collateral employments, as per Art. 13, the habit of obedience and the habit of labour may thus be formed in conjunction, useful literary and other intellectual instruction being, during a portion of each day, superadded. Through plenitude of mental occupation, contentment,—the fruit of a continuity of moderate and pleasurable desire, excitement, and correspondent gratification,—with urbanity of deportment, may thus be substituted to listlessness, uneasiness, discontent, and quarrelsomeness, the natural endemial diseases of unfurnished minds. In this manner, that state of things, which is to a certain degree forced upon such communities by the operations of their enemies, may be made subservient to ultimate good.

While by means of the appropriate and inseparable discipline, privates will thus have learned how to *obey*, commanders will have learned how to *command:* and, by such learning, supposing it to have for its fruit the habit of *commanding* without *oppressing*, (the power of commanding being divested of the power of oppressing, as per Section 8,) the lot of those who are thus under command will be *better*—more conducive to happiness—than if they were *not* under such command. Where no such determinate and legislative checks to abuse of power by oppression have place,—power, by whichsoever of its two instruments, matter of *punishment* and matter of *reward*—operates, within the limits prescribed to it by the political and popular or moral sanctions, arbitrarily and without check. In this case, in great measure, are in *private life* the masses of power respectively exercised in the several relative conditions in life, domestic and extra-domestic: exercised, to wit, by husband over wife; by father over children; by master or mistress over domestic servants; by employer over persons receiving or expecting employment at his hands; by customers over dealers; by possessionists over expectant legatees: in public life, by the functionary possessing power of dislocation over his dislocables; and by expected locating patron over persons looking for offices at his hands: in a word, by him who has power to cause uneasiness in any shape, over all those at whose hands he sees no ground for apprehending retaliation; and by him who has power to confer benefits in any shape, over all those who are looking for benefits at his hands. In the case of military command,—even as, upon an average, exercised under existing institutions,—it is to a considerable degree exercised in a manner not altogether arbitrary but judicial; in such sort as to afford against oppres-

themselves to employments [illegible] their own account respectively [illegible] out any special regard to [illegible] ness, with reference to the [illegible] the corps they respectively [illegible] stationed.

2. So in the service of [illegible] federacy, during about [illegible]

In neither of these [illegible] aries thus licensed receive [illegible] pay at the charge of [illegible] not so much do they [illegible] other times: Principle [illegible]

Instructional.

Art. 7. In Engl[illegible] the privates have [illegible] thus to betake [illegible] *non-military*, on [illegible] to pay, instead of [illegible] any part of it—[illegible] to find its way [illegible] superordinate [illegible] expense-mini[illegible] *ing:* this being [illegible] matchless [illegible] ment, and [illegible] ing principle [illegible] pense con[illegible] junct hand [illegible] *ruling few.*

Art. [illegible] which [illegible] in this [illegible] chosen [illegible] and p[illegible] with [illegible] emplo[illegible] crea[illegible]

It [illegible] con[illegible] sud[illegible] m[illegible] th[illegible] tr[illegible] th[illegible]

[illegible] inwards, but none opening out[illegible] with reference to the mass of the [illegible] at large.

[illegible]ment thus made in favour of the [illegible] of military discipline under these [illegible]ances, is the more trustworthy, in [illegible] as it is universally concurred in, by persons by whom, in almost all other particulars, [illegible] of Government, in that so extraordinarily circumstanced country, has for a long [illegible] never ceased to be covered with strong [illegible] strongly-grounded blame.

Instructional. Exemplificational.

Art. 20. Of representative democracies in which, by extension given to the mass of Land Exclusive Force, a reasonable promise seems to be thus afforded of a continued addition to the stock of morality and happiness,—examples are the following:—

1. Late Spanish America, throughout.
2. Late Portuguese America.
3. Haiti, and other hot countries in general, which have not yet made advances in civilisation equal to those made under the advantage of more temperate climates.

Art. 21. So even Greece, (although in this instance the circumstance of temperature, as per Art. 16, has not place:) the moral character having, by oppression inflicted and endured during so vast a length of time, suffered that moral depravation, which on the part of slaves on the one hand, and that of masters on the other, is the unhappily certain fruit of slavery.

Section XIX.

Concluding Remarks.

Instructional.

Art. 1. For the consideration of the Legislature and the subordinate authorities, it will be—what instruction may be derivable from the practice of other states and other times: in some instances the practice, although carried on with advantage *then* and *there*, will be found to be inapplicable *here* and *now*: in other instances, not.

The cases in which it will be found inapplicable, are mostly those in which the applicability depends on the state of the mind.

The cases in which it will be found to be applicable, are those in which it depends on the state of the body.

Of cases in which, it being the condition of the body that is in question, the applicability may be found to have place, example is the following:—

1. Weight which a soldier is capable of habitually carrying about him.

Weight which, according to Vegetius, the Roman foot soldiers were accustomed to carry, sixty pounds.

State in respect of maturity of age being the same, no reason appears why by a Roman at the present day, or a Frenchman, or an

Englishman, the same weight should not be carried.

On the other hand, in the armies of modern times, men are admitted at ages less mature than into the Roman armies of those ancient times. The reason depends on the nature of the armature. For making use of the fire-arms in modern use, less strength is necessary than for making use of the cutting weapon and shield employed by foot soldiers in those ancient times.

Instructional.

Art. 2. Cases in which applicability depends on the state of the mind. For examples see Section 4, *Stipendiaries, who;* Art. 14, *Ranks;* Art. 19, *Distinction between Ordinaries and Erudites.*

In those days, in respect of martial instruction, the difference was small between rank and rank compared with what it is at present. Almost completely unknown in those times were the branches of art and science, on which, for the artillery and engineer armature-classes, appropriate aptitude in so high a degree depends.

Instructional.

Art. 3. Number of the grades. Supposing it ascertained that the number of grades in European service in general, and in English service in particular, is greater than needful, it would not follow that it could with any advantage, or even without utter ruin, be rendered so small as it was in the Roman service in ancient times.

In modern times the state of society and the nature of the armature combine in enabling commanders to employ detachments of small numbers on many different occasions for many different purposes: and consistently with the common safety and the accomplishment of the purpose, whatsoever it may be, no detachment, how small soever, can be without its commander.

On the other hand, in the ancient times in question, comparatively speaking, there was scarcely any action but in the largest bodies. The whole of the force collectible at the time on one side, met and encountered in a body the whole force collectible at the time on the other side.

SUPPLEMENT.

Section I.

Composition of troops (Infantry) in English Service.

The Company.

Unit, is the private.

5 privates and 1 corporal	=a squad	Commanded by a corporal.
10 privates and 2 corporals,	=a half-section.	a serjeant.
20 privates and 4 corporals, 2 serjeants.	=a section	a subaltern (lieutenant, 2d lieutenant, or ensign.)
80 privates and 16 corporals, 8 serjeants.	=a company	a captain.

The Battalion.

8 companies;
with 8 captains.
16 first lieutenants,
16 second lieutenants.

Commanded by a lieutenant-colonel; each half-battalion of four companies, occasionally by a field-officer, (major.)

The office of colonel, as distinguished from that of lieutenant-colonel, is null, or at all events nominal. The colonel of a regiment is always an officer of the rank of general; who derives certain emoluments from the office, but is never required to be present with the regiment, the lieutenant-colonel being in all respects the responsible officer.

2 battalions=a brigade, commanded by a brigadier-general.

2 brigades=a division, commanded by a lieutenant-general.

Section II.

*On Courts-Martial.**

A general Court-Martial in the British service consists of thirteen members *at least*, usually fifteen, to make allowance for sickness or other contingency.

The senior of these is President.

To him, by name, the commander, under whose authority the Court-Martial assembles, directs the *warrant* to assemble and try.

The Judge-Advocate is also named in the warrant.

The other members are not named, but selected by the commander, or taken from the *roster* at his pleasure.

The President must be superior or senior to all the others, and in case of his sickness or death, it is presumable that the next senior would officiate. Of course no man *ought* to vote who has not been present from first to last: though this is not so clearly defined as it should be.

The Judge-Advocate is often a civilian, or common lawyer—often a military man, selected without necessarily proving any fitness.

He holds his place at pleasure, and if a military man, his commission also, like all the members of the court.

He is paid by a *per diem* allowance from date of the warrant assembling the Court, till the sentence is finally returned approved by the commander who summoned the Court (or his successor in the command.)

* Taken from a letter written to the author, by a man of high professional character, now in a distant country, his friend.

The Judge-Advocate's functions are diversified and incompatible. He has all the *influence:* but the President (backed by the court) all the authority, saving the Judge-Advocate's right to record his opinion and dissent on any point of form, at all times, on the proceedings.

The Judge-Advocate is public prosecutor, representing the State.

He prepares the "crime" (indictment) examines for the crown, chief and cross.

Sums up, after all the proceedings for the defence as well as prosecution are closed, in an address to the Court, who, President included, *then* become a jury.

The Judge-Advocate is the adviser in law, and conductor of all the proceedings; though the Court is not bound to follow his counsel, and though the President is always professedly addressed as the chief authority present.

Lastly, the Judge-Advocate is supposed to be counsel for the prisoner; but the prisoner frequently provides (if an Erudite) a lawyer as his *amicus curiæ*, and *he* suggests the questions to be put to evidence—the points of law and fact that arise incidentally—and by a fiction (for lawyers *quâ* lawyers are not recognised in Courts-Martial) obtains leave to "read the prisoner's defence."

It is plain that in most cases, the Judge-Advocate must be possessed of tremendous influence and power, and must be *everything* in such a court. How is it then, that beyond doubt, Military Courts-Martial lean strongly towards the accused, and often baffle power and persecution?

The reason may be found perhaps in the sympathy excited by the total helplessness of one of the Court's own class, exposed thus to such tremendous odds; and the *means* are clear enough, whereby this merciful (and sometimes *erroneous*) tendency is gratified—namely:

The secrecy of individual votes and opinions. This secrecy pervades every important proceeding of a Court-Martial. At any stage, any member has a right to "clear the court" of all, save President, members, and Judge-Advocate. The *clearer* then propounds his objections to any matter of law or procedure, to any question put or answer received, in short to anything.

The Judge-Advocate may record any opinion or objection *he chooses*, to the resolution taken by the Court; but the debate is concluded with closed doors.

The majority decides.

No record is made upon the minutes, of opinions or votes—the proceedings simply state the fact that the Court was cleared and opened again, *the Court* having ruled so and so. The President and members, as well as the Judge-Advocate, are bound by their oaths to secrecy with respect to the vote or opinion of any particular member of the Court.

This secrecy is the grand safety-guard of every prisoner. It has many of the advantages of *ballot;* and its only disadvantage of much note perhaps is, that no *record* is thus kept up of the *reasons* that swayed Courts in deciding important points of law and proceeding. Thus future Courts have no benefit from past decisions: they only know the naked *facts.* Perhaps this is not without advantage, considering the mischief done by precedents in the administration of law; but there is a great difference in this,—that regular Judges and lawyers have all a fellow-feeling and a common comedy to perform, and therefore bend, or affect to bend, to previous *dicta;* whereas the tribunal called a *Court-Martial*, uniting the functions of Judge and Jury, is taken, for each occasion, out of the mass of Erudites; and the occasions being but rare, each member is generally full of his vocation, and inclined to exercise the portion of *power* vested in him, fairly for the public weal.

Thus little difference exists in the temporary Judge-Juror's opinion of to-day, from that of the plain man of yesterday; and thus it is, that only *a few* broad matters of law, procedure, and evidence, have come to be "ruled points."

A great loss of time certainly follows this necessity of arguing everything *de novo;* so far this state of things is matter of regret.

A greater, because invariable, loss of time, arises from everything whatever in the proceedings being conducted in writing. Except the conclave discussions, all evidence is minuted,—opening—defence—summing up, likewise. This *must be*, so long as the sentence and verdict of a Court-Martial are not final, nor anywise operative until they have received the approval of the Commander who assembled the Court, or his successor; and who may correspond with the Court and the Judge-Advocate, pointing out what they *should* do—ordering them to reassemble and revise their "sentence," (not "proceedings," but "finding and sentence" only,) once, or as permitted by the letter of the Article of War, twice.

No such power exists in the navy. There, the Court's finding and sentence are unalterable, and pronounced *in court*—the execution or staying of it, or commuting or pardoning, being in the competence of the Admiralty alone.

No other power should exist in the army, and then proceedings might be abbreviated. The shortest General Court-Martial now takes up several days; every question, even from a *Judge-Juror*, being in writing.

No sentence of death can be pronounced unless *two-thirds* of the Court concur in it. This comes into collision in particular cases, with the rule that the verdict, of guilty or not, is FIRST declared by the same Court *quâ Jurors*, and by a *bare majority;* while a SUBSEQUENT vote is taken distinctly as to the question of pure law; *i. e.* the sentence applicable to the finding of "*guilty.*" This second question is settled by a bare majority, save in two or three articles:—*mutiny—forcing a safeguard*—and *cowardice* are the articles in question [see Annual Articles of War]—where death is the *sole*

punishment—no discretion allowed—yet two-thirds must concur. Suppose out of the thirteen necessary members, six against, seven find guilty of mutiny. The law is peremptory as to the punishment of death; but yet nine against four must concur in this sentence. Whence will come the two in addition to the seven, required? Not, certainly, out of the six who dissented from the verdict of guilty.*

The anomalous things above pointed out do not occur often—1. Because the penalties of most articles of war in the Code admit of great latitude—Death or *such* other punishment as a Court-Martial "shall award"—"*Such* punishment"—"Corporal punishment"—"mulcted in *such* proportion of his pay," &c. &c. Such is the usual phraseology.—2. Because, both in the "*finding*," and in the "*sentence*," the same species of majority, viz. a bare majority, suffices in most cases. This *latitude* of "arbitrary punishment," as the Scotch lawyers have it, is bad: yet it is not easy to say what can be done, where scarcely any of the offences legislated for are *mala in se*, but almost all *mala prohibita* only.

In England, none but Erudites are privileged to sit on Courts-Martial, whether general or regimental. In the navy, none under the degree of Post Captain (*i. e.* Lieut. Col. in the Army;) an absurd rule, originating in days when men of very inferior knowledge and education filled the lower Commission of Lieutenant, which corresponds with Captain in the army. An ensign in the army is qualified to sit on any Court-Martial. None under the degree of a *field-officer* (of which the lowest rank is that of *Major*) can lawfully be President of a *General Court-Martial;* nor under *Captain*, of a Regimental Court, and this only in case of necessity.

In India, all the *native officers* of a battalion, (viz. one *subahdar-major*, ten *subahdars* or captains, and ten *jemahdars* or lieutenants) *must* have risen from the ranks as private sepoys.† In this class of Hindoos and Mohammedans, (native officers,) is *wholly* vested the delicate function of doing justice between the sepoys and the state. All the forms are the same as in British Courts-Martial. The Code almost the same.

A Judge-Advocate, the ordinary English functionary who acts in white Courts-Martial, sits in General Courts-Martial; and in "regimental," or "garrison," or "line" Courts-Martial, a European officer is temporarily named to act as superintending officer, with exactly the powers of a Judge-Advocate. European and native sworn interpreters are employed. Everything is reduced to writing in English, by the Judge-Advocate. Sentence is approved by the officer who ordered the Court. Matters of life and death, equally with those of the most trifling nature, are handled by these tribunals, and no complaint is ever made of their conduct. *Substantial justice is always done:* and, if any slight leaning exist, it is not towards their own body, but towards the State.

The *minor* Courts-Martial are the worst parts of the system. Until lately they acted not under any solemn sanction of oath or other asseveration, whether on the part of Judges or evidence—nay, it is not very long since "*Drumhead* Courts-Martial" used to be assembled, without any record of proceedings, and sanction instantaneous lashing (five or six hundred stripes) of men taken from the ranks for some sudden offence of discipline.

Sir Francis Burdett has done indescribable good in the whole field of military justice, by drawing attention to these Courts. Punishments are now of a more judicious and merciful kind—Drumhead Courts are *defunct*.

All Courts now meet under sanction of oath and record.

A species of *more formal* regimental Court, called "*General Regimental Court-Martial*," has arisen to take cognizance of offences which used to be referred to *General Courts-Martial*. The difference is, that the new Court has a responsible person to act as Judge-Advocate, which no minor Court formerly had; and a greater number of members.‡

In the French armies stripes have ever been unknown. Count de Narbonne, before the Re-

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* Hence, the virtual effect of the two rules taken together is, that no individual shall be sentenced to capital punishment, unless two-thirds of the court concur *in finding him guilty of the facts.—Ed. of first edition.*

† It would be a mistake to infer from the term *native officer*, that the individuals so named hold the rank usually considered as attached to the term *officer* in Europe. Their *functions* are undoubtedly very important: but a true description of their *rank* would be, that a *subahdar* holds nearly the same eminence in the military hierarchy, as a *troop serjeant-major* in a regiment of cavalry; while the *subahdar-major* (an officer of comparatively late invention) may be considered as possessing the dignity of the *regimental* serjeant-major in the same service. The youngest ensign, from the moment he joins the regiment, commands all native officers; and would do so, if the question were of taking the command of the regiment on a field of battle. A general officer sometimes appoints a native officer to act as an additional aide-de-camp; which is intended to be, and probably is, felt by the native soldiery as a personal compliment on the part of the commander. But this fortuitous occurrence involves no further consequences.—*Ed. of first edition.*

‡ The *General Regimental-Court-Martial* (of which the name by itself is a species of solecism) is an invention for giving to the officers of a regiment the powers (with the exception of capital punishment) for which it used to be necessary to refer to a *General* Court-Martial, or one composed of the officers of different regiments assembled. It is composed of thirteen officers, frequently including the youngest ensigns who have been six months with the regiment; and its usual application is to sentence soldiers to transportation, for what, before a Regimental Court-Martial, would have been called *absenting themselves from their regiment*, but in this case is laid as *desertion.—Ed. of first edition.*

volution, tried to introduce the *coup du plat de sabre*, in conformity to the *Germanizing rage of England and France* forty years ago. *Thirty thousand men are said to have deserted* on the promulgation of the order, and it was abandoned. The *Peine du Boulet*—hard labour—ignominious dresses,—imprisonment, &c., are inflicted for smaller offences; but death is often inflicted for desertion, mutiny, &c.

In the Indian sepoy army, flogging is comparatively rare, and almost solely confined to ignominious offences, theft, &c. No *flogged man* is usually allowed to be retained in a corps, but is turned out. It is needless to say that such an army must be animated with a very high spirit, and that such a system could only be maintained where the *status* of the soldier is placed very high in general estimation. And so it is.

A sepoy considers himself, and is considered by family and neighbours, a gentleman. All the higher ranks (of natives) in the battalion are filled from the lower exclusively. Pay, clothing, food, lodging, medical treatment, invalid-pension—all are liberal and quite secure; and the natives judge and punish each other by a simple though severe code of laws. If this could be done in England, instead of filling our armies with jail-birds, the same effect would follow; and, as in Bengal, fifty aspirants would follow each battalion, waiting for vacancies.

In France, it is well known how much the military *morale* was raised by the unsparingness of the conscription, by the *open avenues* between the marshal's and the private's situations, by the sympathy created between officer and soldier owing to those circumstances, and to that of every officer being obliged to begin as a private soldier.

In Austria and Prussia, where they *count quarters* and so forth, the *morale* of the military machine is of the lowest grade in the scale. Yet these last are at least *as* dangerous to liberty and humanity, as the French or the sepoys,—as ready instruments against their countrymen—their own fathers if need be.

Is it only then, when the soldiery of high military *morale* look up exclusively to the *Executive* for promotion, protection, bread, that they are dangerous? Let us hope this is so; and that it may be possible to find the two desiderata capable of coinciding—namely, a high military feeling among the soldiery, with a preference of country, liberty, public rights, in case of collision, to the will of one.

To compass this, measures must be systematically devised to make the few stipendiaries cease to consider themselves as servants of the Executive alone, paid by it, promoted by it, dependent on it. But all this, though perfectly feasible in a really free country where representation of the people is substantive, cannot co-exist with an overshadowing aristocracy and an unreformed Parliament.

Our *English volunteers* might, in a political panic or other epidemy, have by accident taken part with a sovereign or minister in a direct attack upon such liberty as was possessed by their countrymen. But this delusion could not have long subsisted. So the thirty battalions of the French Parisian National Guard; 12,000 of whom long survived all political changes. So the American militia and regulars in both wars.

Remarkable fact—that in India, where the English pretend they cannot introduce criminal or civil *native* juries—they *have* introduced them from the very origin of their power—seventy years ago, in the sepoy service. No sepoy can be punished *in any way* but by sentence of native officers, all of whom are of his own colour and caste, and *all* have served for many years as private soldiers. The thing has *completely* answered in practice, by universal consent.

Subsidiary Observations by the Editor of the Original Edition of the Chapter on Defensive Force.

The Editor of the Chapter on Defensive Force has been offered the opportunity of appending such subsidiary observations as may appear to bear upon its general object.

He is desirous of stating, that all which is thus introduced is on his own responsibility, and in no degree involves the authority of any of the rest.

Art. 1. *On different descriptions of Land-service Defensive Force.*

First in order of institution, and principal in point of magnitude, must always (or with such inconsiderable exceptions as scarcely to permit notice) be the service of *Infantry*.

The first instinct of man is to take care of himself. The earliest efforts of men on foot combined for war, will consequently, (and more especially where the missile weapon is one of great power and effect,) be in open or dispersed order; in which, though there may be a considerable degree of unity of operation, (as, for example, all may advance on one particular point, and at one particular time, by the arrangements of one or more leaders,) the result will be the sum of the efforts of individuals acting under the guidance of their individual courage and intelligence, rather than of discipline. Of such composition, in a great measure, were the earliest armies of France in the Revolution: such also were the Vendeans opposed to them in the West.

But when a considerable number of experiments have been made in this kind of war, it begins to be generally found out, that great effects are produced in favour of whichever side can induce large bodies of men on foot to act together with closed ranks, and thereby form themselves into compact military machines, moved and directed entirely by the will and intelligence of individual commanders. Such

bodies may not supersede and totally remove the utility of the other previously-described species of force; but they are found to be immense additions to its efficacy. In short it is determined by experience, (by which everything else in this world is determined,) that a *certain*, and this a very *large* proportion, of a regular army of given numerical strength, will produce an increased result in the shape of power, by being trained to fight in close order.

What *is* close order, must be determined with relation to the species of arms in use. The ancients thought of nothing less than sixteen deep; because though they were not absolutely without machines approaching to the nature of artillery, these were feeble, difficult to move, and on the whole comparatively inefficient. But when armies came to be exposed to such powerful agents as modern artillery and musketry, their ranks were speedily reduced to *three*. For, in addition to the havoc made by the modern missiles on bodies of deeper formation, it was discovered that in no ordinary circumstances could more than three ranks employ their own missile weapons at the same time; so that, so far as the combat was to be decided by these, any ranks above three were non-effective.

When fire-arms were first introduced into armies, it was natural that an over-strained idea should be formed of their effects. The opinion therefore gained ground, that a combat between two armies of disciplined infantry, could be nothing but a mutual slaughter of two lines of men drawn up opposite to each other, and trying which should suffer longest. But by degrees it was discovered, that the power of fire-arms, great though it was, had been overrated. Fear, hurry, defect of vision from smoke, difficulty of hearing orders from noise, all tended to make the effect of a direct and continued fire vastly less destructive than might have been expected. And in addition to these negative causes diminishing the danger of the attacking party, it was found that in the extended positions occupied by great armies, the assailant had almost always, in some part or other of the field of action, the power of advancing under cover of peculiarities of ground or other advantages, and moreover of covering himself by troops in open or dispersed order, who could draw off the fire of the enemy at the same time that they were themselves comparatively covered or unexposed. In these ways it came to be discovered, that in spite of the effects of fire-arms, battles of infantry were, after all, in a great measure reducible to contests between bodies of men in close order, and at short distances,—sometimes *so* short as to employ the *arme blanche* (or manual weapon as distinguished from that which acts by means of gunpowder.)

From these circumstances arose the distinction between *Light Infantry*, and *Infantry of the Line*, or what in the continental armies are often collected into battalions under the title of *Grenadiers*. From their several uses it seems to follow,—that the first are the most easily formed, and may contain by preference those who have more intelligence than discipline, or who from youth, want of stature, or other causes, are deficient in athletic vigour: in this way also the radical force is most speedily and easily made to be an effective part of the public defence, and the defensive force of communities increased in comparison with the offensive, —a consummation evidently contributory to the general happiness of mankind. And—that the others, or Infantry of the Line, should be constituted by preference of those who, from habits, education, or otherwise, are most amenable to discipline, or least endued with the qualities favourable for the formation of irregular combatants; and moreover should be composed by preference, of men of stature and that species of strength which is operative in bodily contests.

Next of the service on horseback. When it had been discovered that bodies of infantry might produce striking military results by means of celerity of movement upon various parts of the enemy's formation or position, it was but a small step to the observation, that this power of celerity might be obtained in a much higher degree by means of troops mounted on horseback. And the probability is, (both from general reasoning and from the contents of history,) that the earliest cavalry was considered as something very dangerous and irresistible by men on foot. One of the earliest military improvements, however, in all nations that have employed disciplined armies, has been the discovery, that so long as infantry in close order preserved its discipline and coolness, it was virtually unassailable by cavalry, or at all events could only be assailed with effect by means of such superior sacrifices as amounted in practice to the same thing; and the extent of this result has been increased by the introduction of fire-arms. When, indeed, infantry was intimidated and had lost its union and resolution,—when it had ceased to obey the directions of a presiding will, and the attention of the individuals composing it had been directed to the means of escape rather than of victory,—as, for instance, when it had been made to give way before the victorious infantry of an assailant,—*then* the power of a body of cavalry was found to be overwhelming. And even before the victory of the infantry was decided,—or, as it may be expressed, *durante conflictu*,—the rapid movement of a body of cavalry towards a point that was already vulnerable, or that was sure to become so in the event of the superiority of the enemy being acknowledged, was found to be a powerful instrument of success. In the earliest application of cavraly, therefore, the mere circumstance of velocity, or the power of rapid locomotion, may be held to have been the most important agent in the expected result.

But when cavalry had thus come to be employed as what may be called a *flying*-piece on the chess-board of war, it was speedily dis-

covered, that there were many circumstances, in which the operations of the hostile cavalry could in no way be so well opposed or neutralized, as by moving against them with a *piece* of the same kind. If infantry, already engaged with an equal force of infantry, was disturbed by the rapid approach of a body of cavalry in addition,—or if it had given way before the enemy's infantry, and was in the act of being destroyed by the cavalry that supported it, —there was manifestly no practicable way of moving with sufficient rapidity to its relief, except by attacking the cavalry with a body of the same kind. This, therefore, led to the employment of cavalry against cavalry. And here it was speedily discovered, that in combats of this nature, not only rapidity of movement, but *strength* was essential to success. In effect it was discovered, that the horse was the principal part of the machine, and that in proportion to its strength and vigour, was the power of the whole. And this led to the formation of a cavalry *d'élite:* which is, or ought to be, what is known by the distinctive names of Cavalry of the Line, Heavy Cavalry *Grosse Cavalerie;*—while at the same time there exists another cavalry, (which for distinction's sake will be here called Ordinary Cavalry,) capable of performing the common services of cavalry, but less applicable than the other to contests where individual strength is of primary importance. If it should be asked, why all the cavalry should not be of the best, the answer is, that all cannot be of the best. The demand for cavalry will, in every war where a country shall be called upon to put forth its strength, be greater than there is a possibility of supplying by horses of the highest strength and quality. And so forcibly is this felt, that in most of the European armies there is a *third* kind of cavalry, intended principally for the service of out-posts and making observations; which goes under the name of Light Cavalry, and is mounted on horses of still smaller height and physical force. In the British army this last class of horses is non-existent; the quality and number of horses in the British islands, with relation to the number employed in war, being such as to allow of all the Light Cavalry being mounted on horses of the second class.

The Artillery (as before noted) is an accessory to whose agency little that is analogous existed among the ancients. Since the campaigns of the French Revolution, its importance has been greatly extended. As being the weapon which demands most science, it will be always a favourite arm, where the intelligence of nations in a *more* advanced state of society, is brought into opposition to the force of such as are in a *less*. And the greater the diffusion of intelligence, the greater will be the results likely to be derived from this arm. On the whole, therefore, the advantage is likely to be on the side of those states in which the power of self government is in the hands of the many.

The great and palpable division of artillery is into that which *manœuvres*, and that which does not; in other words, into Field Artillery, and the artillery used in the attack and defence of fortresses. With respect to Field Artillery, the inferences from modern wars are, First, That though it may be desirable and useful that all commanders of large divisions of the army should have certain limited quantities of artillery awaiting their disposal, the great effects of artillery are to be procured by employing it *offensively* in great masses. Secondly, (which is only a consequence from the other, and does not seem to have been so fully appreciated and developed as might have been expected,)—That all Field Artillery is, or ought to be, of the nature of cavalry, or what is commonly denominated Horse Artillery. Without the power of rapid motion derived from the artillery-men being mounted, it is impossible that it should perform the offices expected from it. Every man who has seen war, will have observed numerous instances in which the infantry, by reason of its greater power of surmounting obstacles, could get over the country faster than the cavalry,—still more, than the artillery. And the only way to enable the artillery, in even the ordinary circumstances of action, to keep up with the infantry,—is to give it the power of compensating for obstacles, by exerting the velocity of cavalry after they are overcome.

Next in importance to the artillery-men being mounted, is the simplicity of calibres. The calibres of field artillery might apparently be reduced to *two;—ex.gr.* the calibre of six pounds for the long gun, and of twenty-four for the howitzer intended to act with shells in positions which do not admit of direct fire. An observation deducible from tables of artillery practice, and which appears to have been much overlooked in the construction of modern artillery, is that (within certain limits) the weight of metal in a gun being supposed fixed, the effect for field service, or in other words for acting against men and horses not covered by fortifications, *will be greater when the given quantity of metal is formed into a gun of smaller calibre, than into one of greater.* For proof, reference is had to the tables; showing, that of two guns circumstanced as above, the smaller calibre absolutely sends its single or round shot farther with the elevations in ordinary use, and moreover expels a greater quantity of the small balls called grape at a single discharge,—which is explained by the gun's being comparatively stronger, and enduring a comparatively greater charge. Hence, if, as may often be the case with a Defensive Force, there should be a necessity for opposing a field artillery of brass with one of iron, (in which the inferiority of the iron is, that to obtain the same strength, the weight must be increased from a third to a half,) the best way of diminishing the disadvantage will probably be by diminishing the calibre. This, therefore, is an observation tending to increase the efficiency of defensive force.

It is evident that horse artillery, considered as a species of cavalry, possesses precisely those qualities which the other cavalry has not. It can convey to a given point the faculty of overwhelming, or helping to overwhelm, a body of infantry; and when it is in combination with cavalry, the same necessity which obliges the infantry to form squares to resist the cavalry, exposes it to destruction from the artillery. Horse artillery, therefore, in localities favourable to its action, has tended to give the advantage to cavalry over infantry; or, in other words, to confine the superiority of the infantry to localities not adapted for the movement of large masses of horse artillery.

A difference discernible between horse artillery and other cavalry is, that horse artillery has the most marked power of *deciding* victory; cavalry, of *improving* it.

The use of foot artillery (or artillery where the artillery-men are not conveyed on horseback) appears to be with propriety limitable to the attack and defence of fortresses. It is, therefore, in reality, part of the science of the engineer: or—the sciences of the attack and defence of fortresses, and of the use of heavy artillery, should be combined in the same individuals.

The use of fortresses in modern war appears to be reducible entirely, or nearly so, to their effects upon communications. For example, a fortress which secures a certain passage to the possessor, and enables him to exclude his enemy from the same passage, is of the same value and effect as the possession of a gate, which lets in one man and keeps out another. It is in just continuation of this metaphor, that a fortress is sometimes styled "*a key*," "the key of a country," &c. A fortress which is the key to nothing, is in modern military estimation worth nothing, and would be better dismantled. Many ancient fortresses are thus situated, and therefore have been abandoned. But to have any effect in the way of a *key*, a fortress must be connected with some extensive local obstacle or difficulty, as for example, a river, or a chain of mountains. If there is to be a gate, there must also be something of the nature of a wall: for a fortress in an open country, or on a plain of ice, would be like a gate where there was no wall.

The idea that fortresses might operate as checks to an invading army, by the fear of the effect of their garrisons upon its rear, may be considered as obsolete. If a hundred thousand men retire before a hundred and twenty thousand, and as the means of checking the enemy, throw fifty thousand into fortresses,—the consequence only is, that even if the enemy leaves fifty thousand to watch them, the inequality of the active forces that remain, instead of being as five to six, will be in the proportion of five to seven, which is worse than before. But the invader *will not* leave fifty thousand. He will contrive that, for instance, thirty thousand, collected into larger bodies than the garrisons of the divided fortresses, shall keep the latter in check, and be ready to fall with a superior force on the first that ventures beyond it walls; and the difference (twenty thousand) he will add to his former superiority in the field, making the final proportion that of five to nine. Fortresses, therefore, considered merely as places of shelter, are not a source of strength to a retreating army in operations on a large scale, but the contrary. But as *keys* to communications, fortresses have a very considerable effect, though less than was anciently attributed to them. A fortress that can stop up a point of passage for a certain period against all opposition, may oblige an invading force to lose time in taking a circuitous route; and several fortresses of the same kind in succession, may cause the loss of time to amount to some weeks—and a week's greater or less delay may determine the fate of a nation. Hence there is a substantial use of fortresses, and there is an imaginary one; and it is the business of statesmen and commanders of armies, to distinguish one from the other. And this proper use of fortresses is evidently an important consideration in relation to Defensive War.

Hitherto the subject has been that of different armatures or modes of arming, or what the French distinguish more briefly by the word *arme*. The next is, of the mode of applying them. And these two subjects have manifestly a degree of inter-connexion with each other. Arms of a particular kind are chosen, from an opinion that they are the most effectual for the conduct of war; and war is conducted in one certain manner and not in another, in consequence of a reference to the nature of the arms in use.

The great division which presents itself in this place, is the division into *tactics* and *strategics*. It is remarkable, that after all that has been written on the military art, men in general have not yet come to a clear and vernacular comprehension of the difference between these two things. Even Jomini (the last military author of name, and the only one who has written intelligibly on the rationale of the movements of armies*) is not clear upon it. *Tactics* (from τάσσω *ordino*) are the preparation of the instruments. *Strategics* (from στρατὸν ἄγω) are how to apply them after they are made. To

* *Traité des grandes Opérations militaires. Par le Général Baron de Jomini;* 3 vols. in 8vo, *avec atlas;* 40 *fr.—Paris,* 1811. The book is an *exposé* of the military system of Napoleon. When France was invaded in 1813, Jomini went over to the Allies; and altered the subsequent editions of his book, to please his new associates. The later editions are consequently diminished in value. There are also several volumes professing to be a continuation; but of inferior interest. In 1830 the same author published, *Introduction à l'étude des grandes combinaisons de la stratégie et de la tactique, notamment au Traité des grandes Operations militaires. Anselin, Paris.* 2 *fr.;* which is a kind of syllabus of the other, with additions.

as equal to a continual payment of £1 *per annum*. Hence, by a nation which has considerable capital at command, thirty riflemen may be raised, armed, and permanently kept on foot, for the same expense as thirty-one common infantry-men. But it has been shown that, in appropriate circumstances, the advantage of the rifle over the common musket is as 13 to 5. Hence, if riflemen are raised to the extent that can be employed under such circumstances, and to no greater, 5 of these riflemen will be as useful as 13 men with muskets: or, preserving the same proportion, 30 riflemen will do the service of 78 common infantry-men. But 30 riflemen are only the expense of 31 of other infantry. The expense, therefore, of 47 infantry-men out of 78 will be saved; or a given expense will be applied, with an increased final result in the proportion of 78 to 31, or upwards of 5 to 2.

In the same manner a cavalry soldier is ordinarily supposed to cost about £75 a-year. Let the horse be assumed to last on an average six years; and let the question be, of the effect of adding £20 to the purchase-money of the horse. The additional cost of purchasing and from time to time replacing such a horse, may (with allowance for the interest of money as before) be rated as equal to a continual payment of £4 *per annum*. Hence 75 horse soldiers mounted in the improved manner, may be maintained for the same expense as 79 of the other; or by striking off six or eight men and horses per squadron, the regiments of new cavalry will cost no more than the old. The question therefore will be, whether for certain services, such squadrons will not be more effective, than squadrons of the common kind with six or eight men and horses more in each; or whether the efficiency of the new squadrons, with equal numbers, will not be increased in a greater proportion than that of 79 to 75.

On the same principle, if it was proposed to give the rifle to a portion of the mounted troops, the comparative expense would only be in the proportion of seventy-six to seventy-five.

These considerations throw light on the *expensiveness* of anything that is *inferior*, in a permanent or Stipendiary force.

In the arming of the Radical force, the economy of using the improved instrument is not so demonstrable, nor so reducible to practical effect. If every man of military age in the United States of America can be induced or obliged by law to arm himself with a musket of the cost of £1, it does not follow that it would be feasible or proper to direct him to arm himself with a rifle of the cost of £10. But still, the advantage derivable from the weapon in the proportion of 13 to 5, is capable (more especially in a time of public alarm) of being held out as an effectual inducement to a great number of individuals, to arm themselves voluntarily in the improved manner.

CHAPTER XI.

MINISTERS SEVERALLY.

Section I.

Election Minister.

Enactive.

Art. 1. To the Election Minister, under the Legislature and the Prime Minister, it belongs to give, at all times, execution and effect to the matter of the *Election Code*, to wit, as to the mode of filling the seats in the Legislative Chamber, and as to the mode of filling the seats in the several Sub-legislative Chambers.

Enactive. Expositive.

Art. 2. To this purpose, it belongs to him to exercise,—as to all *persons*, in so far as employed in any part of the business of any of the several elections by which those same seats are filled, the *locative*, *suppletive*, *directive*, and *dislocative* functions;—as to his own office, the *self-suppletive* function;—as to *things*, in so far as thus employed, in conjunction with the Finance Minister, the *procurative*, *custoditive*, *applicative*, *directive*, *reparative*, *transformative*, and *eliminative* functions;—as to *persons* and *things*, the inspective;—as to *persons*, *things*, and *occurrences* thereto belonging, the *statistic*, *recordative*, *publicative*, and *officially-informative*;—as to *states of things*, *ordinances*, and *arrangements*, the *melioration-suggestive*. Concerning these functions, see Ch. ix. Ministers collectively, Section 4, *Functions in all*, Art. 44 *et seq.*

Instructional.

Art. 3. For the whole of the process by which these seats are filled, see the aforesaid *Election Code*. Section 8. [Works, vol. iii. p. 577.]

Section II.

Legislation Minister.

Enactive. Expositive.

Art. 1. To the Legislation Minister it belongs to render to the business of the *Legislational* Department, service analogous to that which, by the aggregate of the operations of the several other Ministers, with the exception of the *Election* Minister, is rendered to the business of the *Administrational* Department.

Enactive.

Art. 2. To this purpose, it belongs to him to exercise, always in subordination to the Legislature, the functions following: for the explanation of which, see above, Ch. ix. Ministers collectively, Section 4, *Functions in all*, Art. 44 to 70.

1. As to all *persons* employed in any part of the business of his office:—1. the *locative*—2.

the *suppletive*—3. the *directive*—4. the *dislocative*.

II. As to his *own official situation*:—5. the *self-suppletive*.

III. As to *things*, in so far as employed in, or in the business of, his office, (but not exercisible otherwise than in concert with the Finance Minister):—6. the *procurative*—7. the *custoditive*—8. the *applicative*—9. the *reparative*—10. the *eliminative*.

IV. As to *money*, also in concert with the Finance Minister:—the *procurative*—the *custoditive*—and the *applicative*.

V. As to *persons* and *things*:—11. the *inspective*.

VI. As to *persons, things, money*, and *occurrences* thereto belonging:—12. the *statistic*, (as to which see Ch. ix. MINISTERS COLLECTIVELY, Section 7, *Statistic function*,)—13. the *recordative*—14. the *publicative*—15. the *officially-informative*.

VII. As *to states of things, ordinances*, and *arrangements*:—16. the *melioration-suggestive*.

Expositive.

ART. 3. Of his procurative, custoditive, applicative, and reparative functions, subject-matters are the *Legislative Archives*. Of the contents of these archives, examples are, the manuscripts, books, maps, and any other imitative sketches, kept for the use of the Legislative Assembly.

Expositive.

ART. 4. So all *edifices* in which the Assembly holds any of its *sittings*; and all edifices in which are kept any of its *Archives*: the edifices, with the furniture thereto respectively belonging.

Expositive.

ART. 5. In particular, to all *accommodations* for the several descriptions of *persons*, habitually or occasionally *present*, at the sittings of the Assembly. Examples are—

I. *Members*.

II. *Ministers*, or their *subordinates*, or both, attending from the several subdepartments.

III. *Clerks*, attendant on the Assembly.

IV. *Reporters*, official or spontaneous, of its debates and proceedings.

V. *Visiters*, or say *Legislational Inspectors*; to wit, persons at large, attending in their quality of members of the Supreme Constitutive.

VI. *Ministers*, *Envoys*, and *Agents*, of all classes and ranks, from foreign powers.

VII. Persons under examination, or waiting to be under examination, in the Assembly, or in any of its Committees, in the quality of *witnesses* or *petitioners*.

Enactive. Expositive.

ART. 6. So of his *statistic* and *melioration-suggesting* functions, in respect of all portions of the Pannomion, the duration of which has been rendered *temporary*: delivering in, to the Assembly, on the first day of its sittings, a *Report*, stating such laws, if any, as expired in the course of the year just closed, and such as, in the course of the year just begun, are about to expire: to the end that nothing apt may cease, nor anything unapt be continued, for want of notice.

Enactive.

ART. 7. So, it belongs to him to direct all arrangements relative to the *printing* and *distribution* of the Pannomion, including all additions from time to time made to it.

Enactive.

ART. 8. So, in relation to the proceedings of the several *sublegislatures*—

I. In virtue of his *officially-informative* function, to make known to them respectively, with all promptitude, all laws, and directions given in relation to them by the Legislature.

II. In virtue of his *inspective* function, to watch over and eventually indicate to the Legislature any such sublaws or proceedings as among any of them respectively shall have had place, to the detriment, as supposed by him, of the authority of the Legislature, or of this or that other Sublegislature.

Enactive.

ART. 9. So, to exercise the *statistic* and *melioration-suggestive* functions, with relation to the *form* in which the body of the law presents itself: that is to say, the manner in which the portions of matter belonging to it are grouped together—the order in which they follow one another, and the words by which they respectively stand expressed.

Enactive. Expositive.

ART. 10. In particular, with relation to the *tactics* of the Assembly: the rules, to wit, by which its debates and other proceedings are directed.

Instructional.

ART. 11. Simple abrogation, simple addition, substitution, or modification. At each point of time, by every ordinance issued from the Legislature, one or other of these operations will, by every fresh enactment, be performed upon the Pannomion, in its then existing state.

Case I. *Simple abrogation*. To the portion of matter in question, reference will be made by indication made of the place it occupies in the *Pannomion*: the place, as designated by the numbers respectively applicable to the code, the chapter, the section, and the article. Added for better security against errors of pen or press, the two first words and the two last words of the mass of matter intended to be abrogated.

Case II. *Simple addition*. Mode of reference,—indication given of the chapter and section, and of the article immediately after which the new article is to be considered as inserted.

[illegible] in the result, is a [illegible] of the two former; subjoined to [illegible], as above.

[illegible] Reference being [illegible] the article or articles in[illegible] to be modified, for giving expression to [illegible] modification,—choice will be to be made [illegible] two modes, or say forms, in either of [illegible] make capable of being expressed: [illegible] or say the *directive*, and [illegible] as to which, see Ch. vi. Legis[illegible] Section 29. *Members' Motions.*

Enactive. Instructional.

Art. 2. When and as often as the whole [illegible] the copies, of which the edition of [illegible] in question is composed, are disposed [illegible] whether gratuitously delivered, or sold—[illegible] Legislation Minister will have caused print [illegible] edition, with the whole of the contents [illegible] in re-editive form, as above: inserting a [illegible] thereon, of the then last state in which [illegible] contents had been placed by the *modifica*[illegible] or say *amendments* made in the *correc*[illegible] or say *directive* mode.

Expositive.

Art. [illegible] *General Code*—system of *Parti*[illegible] to one or other of the aggregates, [illegible] denominated, will every portion of the [illegible] at all times, be found referrible.

Expositive.

Art. 4. By the *General Code*, understand [illegible] matter by which, in one way [illegible] interests of persons in general are [illegible] upon each class of persons, benefits, [illegible] without corresponding rights, being [illegible] conferred; or burthens, [illegible] corresponding obligations im[illegible] and the same class of per[illegible] conferred, and burthens imposed.

Expositive.

[illegible] *Particular Code*, understand [illegible] by which, exceptions ex[illegible] of no more than one class, [illegible] of persons, or two classes, [illegible] of persons, are principally [illegible] as above, by means of [illegible] conferred, commonly by means [illegible] or special burthens, [illegible] both.

Expositive.

[illegible] that which has place [illegible] and other function[illegible] executing, execution and [illegible] the several enact[illegible] same code: and who [illegible] with the correspon[illegible] with the corre[illegible] functionaries [illegible] the contents not [illegible] but also [illegible]

Instructional.

Art. 17. Comparatively speaking, for re-editions of the *General* Code, the occasions will be rare,—of this or that *Particular* Code, of frequent occurrence: more especially, for example, 1, in the case of the Particular Codes, the enactments having for their object addition, defalcation, substitution, or modification, in relation to the aggregate of the taxes: 2, so likewise the enactments regulating the manner of carrying on this or that profit-seeking occupation; the object of the regulation being either the giving positive increase to the aggregate of the fruits of productive industry, or the preserving it from being, to the detriment of individuals, disproportionately and unduly disturbed, by the manner in which the taxes are imposed.

Enactive. Instructional.

Art. 18. *Legislational-amendment-inspective* function. The Pannomion being supposed completed, no ulterior and succeeding legislative operation can be performed, without operating in the character of an *amendment*,* upon some part or parts of the matter, which it finds established; for, in the text of it, will be found propositions to such a degree comprehensive and extensive, that no ordinance can at any succeeding point of time be ever added, without producing, in some way or other, an alteration in the effect of the aggregate mass, on which it is applied.

Enactive.

Art. 19. Under the direction of the Legislature, to the Legislation Minister, in virtue of this his *Legislation-amendment-inspective* function, it belongs, to take cognizance of every proposed amendment, that is to say, of every fresh proposed ordinance, or aggregate of ordinances, in whichsoever of two sources it has originated: and accordingly either antecedently or subsequently to its presentation to the Legislature. Antecedently to its presentation to the Legislature, it will have come under his cognizance, in the case where it has been committed to him from the Judiciary authority, as per Ch. xii. Judiciary collectively, Sec-

* *Amendment.* In English practice, every change or say alteration produced, or designed and endeavoured to be produced, in the body of law which it finds established, being supposed and affirmed to be for the better,—every discourse having for its declared purpose the effecting any such alteration, is termed an *amendment*, and for the effecting of any such alteration, this term amendment,—this and no other, already being in use in English practice, and thence in French, may, after this notice, without danger of misconception, continue to be employed: and accordingly, after this notice, to say of any printed portion of discourse, under the denomination of an amendment, that it is an unapt or a bad amendment, and that it is no amendment, is what may be said without self-contradiction in effect.

tion 20, *Judges' eventually emendative function*, according to the provisions thereby made for giving to the Pannomion at all times, the benefit of such experience, information, and correspondent skill, as cannot, in any other situation, in an equal degree, have place; and at the same time, preserving the rule of action from being, to an indefinite degree, increased in bulk, and thence proportionally diminished in cognoscibility and certainty of effect, by a species of discourse, composed of discussions occupying more pages than an ordinance which were the result of it, would occupy lines,—and, without having received the sanction of the Legislature, yet capable, notwithstanding, of exercising the influence and producing the effect of law.

Enactive.

ART. 20. As to the mode in which, if proposed in like form as if proposed by a member of the Legislature, an amendment, subject always to the pleasure of the Legislature, will by its silence after appropriate notice, be aggregated to the Pannomion, see Ch. xii. JUDICIARY COLLECTIVELY, Section 19, *Judges' contested-interpretation reporting function*, Section 20, *Judges' eventually-emendative function:* Section 22, *Judges' preinterpretative function.*

Enactive. Instructional.

ART. 21. Remains the case, in which it is from the Legislature, that the proposed amendment comes into the hands of the Legislation Minister: from the Legislature, that is to say, either from some individual member, acting in that character, or from a *Continuation Committee* of the Legislature, as per Ch. vi. LEGISLATURE, Section 24, *Continuation Committee.*

Enactive. Instructional.

ART. 22. The case of *declared urgency*, as per Art. 25, excepted, if and when a proposed law is proposed by, and in the name of, a *Continuation Committee*, the Legislature, to which it is so proposed, will determine, whether it shall be taken into consideration by the whole Assembly in the first instance, or whether, antecedently to such consideration, reference shall be made of it to the Legislation Minister, to the end that, in point of form, its symmetricalness, with reference to the Pannomion in its then existing state, may be provided for and secured.

Enactive.

ART. 23. In case of such reference, direction will thereon be given to him, to return it within a time mentioned, with his Report thereupon made.

Enactive.

ART. 24. Exceptions excepted, no proposed law will be taken into consideration by the Legislature until such Report shall have been made. For the matter and form of such report, see Art. 29. For the reasons why it is thus rendered necessary, see Art. 36.

Enactive.

ART. 25. Exception is, where upon the responsibility of the proposing member, it is by the words "*declared urgent*," with his signature annexed, declared so to be. For the reasons why a proposed amendment will not be received without the fulfilment of this condition, see Art. 36: for the reasons why it will be received on fulfilment of this condition, see Art. 59.

Enactive.

ART. 26. In the case of a law which, in consequence of a *declaration of urgency*, as above, has passed without having been committed to the Legislation Minister, he will, as soon as it has passed, unless inhibited by the Legislature, take cognizance of it, for the purpose of securing its being ultimately in symmetrical form.

Enactive.

ART. 27. If thereupon it be reported by him *symmetrical*, it will be in that state aggregated of course to the body of the laws: if reported *unsymmetrical*, a draft deemed by him symmetrical will be delivered in by him along with it; which draft will, if approved by the Legislature, be so aggregated; or if it be disapproved, it will either be rejected altogether, or another will, under direction of the Legislature, be, by the Legislation Minister, substituted for it.

Expositive.

ART. 28. By a *clause* in a portion of the law, understand any lesser portion proposed to be therein inserted: to wit, whether it consists of but a single word, or an entire proposition in the logical sense of the word *proposition*, or any number of propositions, or any portion of the matter of a proposition, with or without the addition of single words or phrases.

Enactive.

ART. 29. In and by such report, the proposed law will be declared to be in one or other of the three *states*, or say *forms*, following:—

I. "In symmetrical form," as to which, see Art. 32.

II. "Not in symmetrical form."

III. Form undecided: that is to say, whether symmetrical or not.

Enactive.

ART. 30. If, within the time so fixed, the matter of the proposed law has, by the Legislation Minister, been declared to be *in symmetrical form*, it will thenceforward be ready for the consideration of the Legislature, whensoever, whether by the original mover or

any other member, brought on, for that purpose.

Enactive.

Art. 31. If it be declared *not symmetrical*, the word *dropped*, will be added, and thereupon his name, personal and official, attached. So likewise, if declared undecided. But in either case, with or without alteration, it may be introduced, at any time, by the same or any other member.

Expositive.

Art. 32. By *symmetrical form*, as applied to a clause proposed to operate in the character of an amendment, to any article or aggregate of articles, contained in any part or parts of the text of the Pannomion,—understand such form as in respect of *terminology*, *phraseology*, and *method*, including the *grouping* of the matter, and the *order* in which the clauses follow one another, is, not only in *import* but in *form*, in accordance with the matter whereto application is made of it: in such sort that when the two portions of matter—the amended and the amending—are put together, they may wear the appearance of having been originally written at one and the same time.

Expositive.

Art. 33. If the amendment is symmetrical, the mode in which the effect given to it is produced, will be either the *directive*, or say *corrective*, or the *re-editive;* as to which, see Ch. vi. Legislature, Section 29, *Members' Motions.*

Enactive.

Art. 34. When, in the opinion of the Legislation Minister, the proposed ordinance, or say amendment, fails of being symmetrical, or is in an undecided state, as above, he will in relation to it take one or other of the three courses following:—

I. He will, in the *corrective*, or say *directive* form as above, render it symmetrical, and thereupon report it to the Legislature, with the words "Rendered Symmetrical" attached to it; or,

II. He will return it to the member in question, with a Report, expressed by the words, "*requires to be drawn up anew;* or, *not capable of being rendered symmetrical by correction.*"

III. He will return it with his Report, expressed by the words, "*not capable of being rendered symmetrical within the time appointed.*"

Enactive. Instructional.

Art. 35. In case of his rendering it, as above, by *corrective* amendments, *symmetrical*, as to him appears, in respect of form,—he will, in so doing, leave to the best of his judgment, the matter unchanged in respect of purport; and will accordingly not be responsible in respect thereof: at the same time, he will be at liberty by exercise given to the *melioration-suggestive function*, to attach to it an *amendment*, preceded by the words, "*Amendment proposed in respect of purport.*"

Ratiocinative.

Art. 36. *Question.* An amendment, why not receivable in any other than the symmetrical form? *Answer.* Reasons:—Good effects produced by it, the following:—

I. *Prevention of uncertainty.* When in this form, the alteration proposed to be made, is, if the proposal be adopted, actually made, the parts meant to be affected by it, being described in a manner not capable of being mistaken, certainty is the consequence: when by a fresh statute, the text of the body of law which it applies to, being left untouched, it may be matter of doubt and dispute, what are the parts meant to be affected.

II. *Prevention of needless addition to the bulk of the rule of action.* By every such addition, a proportionate probability being produced, of rendering a more or less considerable portion of it incomprehensible, to a more or less considerable portion of the individuals, whose interests are affected by it.

III. *Security against unconnected and improvident alterations.* The proposer will thus be laid under an obligation, of taking the closest view of the effect which will be produced upon the whole body of the Pannomion, by the enactment proposed by him, if it be adopted: and by this means, many a mischievous alteration will be shut out.*

* In English practice, about 1827, a design was formed of consolidating parts of the statute-law, by putting into one statute matter which had entered into the composition of divers statutes, and thereupon in and by the consolidating statutes, declaring those other statutes, or parts of statutes, repealed. But when that which was thus dealt with, was not an entire statute but only a part of a statute, not by *express* designation but only by *general* designation of the contents, has it been undertaken to be repealed: "so much of the statute in question as relates to" such or such a matter, or to that effect:—Consequences, 1. It is left open always to argument, and sometimes to real doubt, what the exact portion of matter is, that was meant to be so dealt with: 2. The body of the law is left encumbered with all these carcases,—some dead,—some as above, in a state between life and death. For this mode of proceeding, one cause may be found in the condition in which in respect of method, that part of the rule of action which is not a mere fiction, is still left—a mass in which, be it ever so enormous, no parts distinguished one from another, by the figures of the numeration table are to be found.

In the statute book of every other civilized nation, the aggregate body of the laws is partitioned into divisions and subdivisions one within another, the results of the last division, being commonly termed *articles*,—these articles all along distinguished by numbers, and in respect to length, each article differing little if anything from the sentences in a

Instructional. Ratiocinative.

Art. 37. Under this condition, added to that of the adoption given to the proposed amendment, by the motion of one member, seconded by another, as per Ch. vi. Legislature, Section 29, *Members' Motions*, Art. 7, a sort of share in legislation is capable of being imparted—not only to *ministers*, members as they are of the Legislative body, as to every right but that of voting,—but also to *persons at large*, considered as members of the Constitutive: and this, too, without preponderant inconvenience. See Ch. xii. Judiciary collectively, Section 19, *Judges' contested-interpretation-reporting function;* Section 20, *Judges' eventually-emendative function;* Section 21, *Judges' sistitive function;* Section 22, *Judges' pre-interpretative function.*

Ratiocinative.

Art. 38. Scarcely without this restriction, could this faculty be thus widely communicated, without preponderant inconvenience: in proportion as, on the part of the people, attention to their public concerns, received that *extent* which is so desirable, the time of the Legislature might thus become overloaded, and its attention bewildered, by a chaos of crude propositions, put forth, without adequate reflection, by unapt hands; and the propositions themselves, with whatsoever utility in other respects fraught, would moreover be employed in waste;—being, by the supposition, incapable of being adopted in such sort as to be made to fulfil their intended purpose.

Ratiocinative.

Art. 39. On the part of all persons thus taking a share in the management of public affairs, a habit of precision and correctness, in thought and expression, would thus be promoted: while, on the other hand, by the timely view of the indispensable task, the unapt would, with the obnoxious and apparently unjust form of positive exclusion, feel themselves excluded in effect.

Ratiocinative.

Art. 40. For the greater accommodation of legislators, on whom the ultimate decision would, on each occasion, have to rest, the subject-matter of decision would, on each occasion, be drawn as it were, to a point; instead of being diffused, as it would otherwise be liable to be, through a chaos of vague generalities.

Ratiocinative.

Art. 41. In the present proposed constitution, the groundwork of every arrangement in detail is unbounded liberty. The problem to be solved is, how to apply such restraints as shall have the effect of keeping the rule of action clear of all immethodical and perturbatory additaments, without prejudice to that essential liberty, which must remain inviolate. The arrangement which has presented itself in this view is the leaving the universal liberty of initiation untouched, adding to it, at the same time, an arrangement which shall secure its passing through the hands of a responsible functionary, by whom, the matter remaining as little changed as possible, it shall, on every occasion, be moulded into a form, such as shall make it quadrate with the form already given to the entire mass to which it is aggregated. If the fiat of this functionary were in every case indispensable, he would be a monarch with a veto in his hand. Power must therefore be reserved to and by the Legislature, to preserve its acts in every instance from the operation of this check: to wit, on the declaration made by the use of the word *urgency*, already in such extensive and frequent use.

Ratiocinative.

Art. 42. No sooner is the word *urgency* heard, than the public eye fixes itself, of course, upon the measure, and the individual by whom it has been brought upon the carpet. The indication of an irreparable evil as about to take place in the event of the usual delay, will be universally looked to, as a condition precedent, to the justifiable use of this important word. The sort of laws to which the use of it will under these circumstances be naturally con-

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literary work at large. In the Statute Book of England, the whole mass of matter to which authentication is given by one and the same touch of the sceptre, is termed *a Statute*, and the statutes which in the course of the session follow one another, are distinguished from one another by the title of *chapter*, with a number annexed. But of these statutes, though there are many of them, each of which is of a bulk equal to that of a reasonable volume, not one has any authentically recognised parts. In practice, somehow or other, in the *printed* copies, a division has been made of them into numbered sections. But neither this, nor any other division, has place in the original manuscript; and thus it is, that the practice of repealing no otherwise than by description, is kept up.

But this practice,—though it has this for its cause, has no excuse: for if the thing described were—not the purport, but the terms—not the meaning, but certain words—for example, from such or such words in such a line in such a page in the Government-printed copy, to such and such other words in such another line of the same or such other page,—awkward as would be the expedient, uncertainty as to the matter intended, would at any rate stand excluded. [The author's views on this subject will be found at greater length in the Tract on Nomography, vol. iii. p. 231, *et seq.* The special defect above noticed was singularly illustrated in the consolidation of the Customs' Acts in 1826,—part of the project above alluded to. After enormous exertions had been made to collect and describe all Acts and portions of Acts bearing on the Customs, it was found after the consolidating Acts were passed, that some had been omitted, and that a supplementary repealing Act was necessary.—*Ed.*]

fined, are those which are of a temporary nature, and which, within the limits of the usual delay, will either have been productive of the full effect desired, or have received their adequately mature form, in passing through the ordinary official channel.

Instructional.

Art. 43. Let a case be supposed in which the disposable time of a single Legislation Minister, will not suffice for the quantity of business thus brought before him: by the universally applied institution of Deputes in the number found requisite, any such deficiency is already obviated.

Ratiocinative.

Art. 44. Objections. I. *Delay.* In the practice of all other governments, in which the business of legislation is in the hands of a legislative body, *delay* is a subject of well-grounded complaint: and, to the causes of delay which have place in those cases, this arrangement adds a new one.

II. *No one man's time sufficient.* A greater number would be requisite: and the greater the number, the greater the room for want of symmetry as between the mode of drawing practised by one man, and the mode practised by another.

III. *Monopoly.* As a draft cannot be taken into consideration, without having passed through the hands of the Legislation Minister, —by his retaining it, through indolence, negligence or design, the patience of the proposing member may be wearied out: and as, per Ch. vi. Legislature, Section 14, *Term of Service*, the session will not last longer than a year, the measure may thus be kept in suspense till, the Session being at an end, the proposer is no longer in a situation to go on with it.

Ratiocinative.

Art. 45. In such sort are these objections connected, that, in relation to them, one and the same set of answers may serve.

I. Under no existing government, has the Legislative body, as yet, been in the habit of sitting, during so large a part of the year as the half: under this code, it never ceases to sit. See Ch. vi. Legislature, Section 18, *Members' Attendance.* Section 20, *Attendance and Remuneration, how connected.*

II. As a standard of reference, and at the same time as a model for imitation, before the eyes of persons in general, and all members of the Legislature in particular, will, at all times, have been the Pannomion, in whatever state the proposed amendment finds it. Familiar the *matter*, not less familiar to them, will have been the *method* and the *expression.* Amongst its objects, or say ends in view, it will have had the giving to it such properties, by which the facility of adapting amendments to it in symmetrical form, will be maximized.

III. In all but a comparatively small part of the business of the Legislative body, the Legislation Minister will have been anticipated in his operations, by a precursor, belonging to one or other of two sets of functionaries. These are—

1. The several Ministers employed (as in so far as a demand for the performance of the legislative service has place, they will be) in proposing, and, with the consent of the Legislature, carrying into effect the several fresh enactments. To the extent of this part of the business, reference to and report from, the Legislation Minister will, unless objection be made by motion, follow; and thus, these operations will not, both together, consume any sensible portion of time.

Exemplification and proof in the English House of Commons: the practice in regard to the first, second, and third readings of a Bill, in its passage to the character of a law.

Of the twelve other Ministers, each will have been continually occupied in giving the adaptation requisite to the proposed ordinances, drawn for the purpose of the business belonging to his own subdepartment: and the process of adaptation being in all cases the same process, and they having, each of them, deputes and subordinates whose assistance will, at all times, be at his command, no deficiency in respect of appropriate and adequate skill can, on their parts, in so far as depends upon practice, be reasonably to be apprehended.

In particular, in the case of the *Finance Minister*,—with whom, in so far as money is concerned, the several other Ministers will have to act in concert, (as to which see the several sections in which their functions are respectively enumerated,) the degree of his familiarity with the business of adaptation, will be to theirs respectively as twelve to one.

2. In the case of a proposed ordinance, proposed by and from the Continuation Committee, as per Ch. vi. Legislature, Section 24, *Continuation Committee*, the person by whom it is proposed, will be the functionary who, on the occasion in question, acts as the organ of that same committee. By the supposition, he will have had more than one year's practice, in the business of giving to proposed ordinances, the required adaptation and symmetry; and to the number of years, during which he will have been habituated to this practice, there will be no positive limits.

Remains, as the only sort of case, that can present any probability of a demand, for the application of labour, of any continuance, on the part of the Legislation Minister—the case, where a member, not having fallen into connexion with either the appropriate Minister or the Continuation Committee, has this or that new arrangement, which, with his name attached to it, he is desirous of laying before the Legislature. In this case, if in his own eyes, he is sufficiently qualified for the performance of the adaptative process, he will perform it accordingly; and in this case, like-

wise, the quantity of time occupied by the exercise given to the Legislation Minister's function, will most commonly be next to nothing.

Supposing a Member to such a degree, new to Legislative business, that even in his own eyes he is not sufficiently qualified,—scarcely can he be at any difficulty, as to the obtaining the requisite assistance. By no man, with any tolerable prospect of success, can a new measure be brought forward, without his having, as he believes, secured the eventual support of fellow-members, in some proportion or other, in the shape of speech and argumentation on that side. Altogether unlimited is the number of those from whom assistance will in this shape be derivable.

Assistance, as above, being obtained or regarded by him as needless, nothing is there to hinder him from applying, in private, to the Legislation Minister for his revisal, antecedently to the presentation of the drafts to the assembly: and with or without corrections, (supposing the former regarded as apt by the Minister,) the time occupied in the conjunct business of reference and report will, as above, be next to nothing.

Instructional.

ART. 46. Note here, that the use and usefulness of this function will consist—not so much in what is done by the Legislation Minister and his deputies, in relation to the process of adaptation, as in what, under the apprehension of seeing the defects in their drafts laid open to his view, and through his to the Assembly's, will be done towards this end by everybody else.

Instructional.

ART. 47. The office of the Legislation Minister will thus, by the very nature of the case, become, though without the name and show of a school, a school of legislation. Into this school, young men destined for public employment, might be admitted, at about the same age as in England, France, and other countries, they are admitted into the office, (for the purpose of being instructed in the business,) of an attorney-at-law; nor, notwithstanding the all-comprehensiveness of its extent, would the subject-matter of the public business, the whole of it being continually before their eyes, and every part of it continually referred to, be by a great deal so difficult of comprehension, as the matter which, in England at least, an attorney finds himself under the obligation of making himself acquainted with: his practice being, for its success, in so high a degree dependent on the degree of his acquaintance with that immense and shapeless mass.

Instructional. Ratiocinative.

ART. 48. These same conditions will apply, of course, to all similar communications, made or sought to be made, to any of the *Sublegislative bodies*, acting within their several fields of service.

Instructional. Ratiocinative.

ART. 49. So many legislative bodies, so many *schools of legislation*, accessible to all, who, by self-regarding interest, or public spirit, shall, at any time, feel themselves prompted to seek entrance.

Instructional.

ART. 50. Note, that, in the ordinary mode, in the case in which the change is made in any other way than by simple repeal or by simple addition, no such certainty is afforded. In so far as substitution is intended, the effect produced on the *old* matter by the *new*, is left questionable and open to argument: and pages, in any number, are employed to do that which after all is perhaps not done, but which might have been effectually done by a line, or even by a word.

Exemplificational.

ART. 51. In English practice in relation to statute law, an instance has been observed, in which the amount of a page is employed in doing what, as therein expressly declared, would have been done by the substitution of the word *or* to the word *and*.

Enactive. Ratiocinative.

ART. 52. To the Legislation Minister, as per Art. 19, it belongs to receive from the *Judiciary* Department *proposed amendments*, as per Ch. xii. JUDICIARY COLLECTIVELY, Section 20, *Judges' Eventually-emendative Function*. For the conservation of the aptitude of the law in respect of *form*, thus is the same security given in this case, as in that in which proposed laws are, as above, introduced by *Members' Motions*.

Expositive.

ART. 53. In the case of each Judicial-amendment Report, the day on which it is received will be termed its *reception-day*. After the lapse of [seven] entire days, if, in the meantime no appropriate evidence of disapprobation has been received by the Legislation Minister, either from the Legislature, or from any of the Judiciary authorities, as per Ch. xii. JUDICIARY COLLECTIVELY, in this behalf mentioned, the amendment thus submitted, will, by consent given by acquiescence, be deemed to have received the sanction of the Legislature: whereupon, if in ready-adapted and symmetrical form expressed, to wit, in either of the two modes, the *corrective*, or the *re-editive*, as per Ch. vi. LEGISLATURE, Section 29, *Members' Motions*, the Legislation Minister will, in its appropriate place, aggregate it to the body of the laws.

Enactive.

ART. 54. To the printed impression of every amendment, thus aggregated, the Legislation

Minister will cause to be added, at the bottom of the page, in form of a note, indication as concise as may be, of the names, personal and official, of the several Judiciary functionaries, as per Ch. xii. Judiciary collectively, Section 20, *Eventually-emendative Function*, through whose hands it has passed, and of the parts, in relation thereunto, respectively taken by them.

Enactive.

Art. 55. Under the care of the Legislation Minister, every day in the Government Newspaper, will be published, a list of all such duly-proposed amendments, as shall have been received at his office, on the day last preceding.

Enactive.

Art. 56. In each such list, in relation to each such proposed amendment, indications will be given under the heads following:—

I. Portion or portions of the existing Pannomion, on which it is regarded as bearing: making reference to the Code, Chapter, Section, and Article.

II. Person or persons, *from* whom it was received at the Legislation Minister's office.

III. Person or persons, *by* whom it was received.

IV. *Day*, on which it was so received.

Enactive.

Art. 57. Every year, within [ ] days after the last day of the last preceding year, or, if need be, oftener, the Legislation Minister will publish his periodical *Amendment Calendar*. Contents of it,—notices of the several amendments submitted in the course of the year, distinguishing between those proposed by motion in the Legislative Assembly, and those submitted from the Judiciary; and in both cases, between those which have been adopted, and those which have been rejected.

I. Amendments *adopted*, in pursuance of motions by members; adding the names, of the mover and seconder, and of the other supporters of it, if any, and of the opponents, if any; also notice of the days when adopted.

II. Amendments, submitted by Judges, and *adopted:* with the names, personal and official, of the proposers, and the several other judicial functionaries, through whose hands, as per Ch. xii. Judiciary collectively, Section 20, *Eventually-emendative Function*, Arts. 2, 3, they have respectively passed: also like notice as to the days: and of the approvals, acquiescences, or disapprovals they have experienced, as per Ch. xii. Section 20, *Eventually-emendative Function*.

III. Amendments submitted, as above, and *rejected;* with like indications, as above.

IV. Amendments, which, having been received in a *symmetrical* as well as ready-adapted form, from Members of the Legislature, Ministers, or persons at large, have, on motion made by members, been *adopted:* adding names of proposers, as well as members, and days of adoption, as above.

V. Amendments, which, having been received in a ready-adapted and *symmetrical* form, but *not* moved by *members*, have dropt: with names of the proposers; except in so far as the contrary has been desired by them.

VI. Amendments, which, not having been in ready-adapted or else not in symmetrical form, have, on that account, by whomsoever proposed, dropt: also with names of proposers, as above.

Enactive. Ratiocinative.

Art. 58. When, of the Pannomion, or of any of the Codes belonging to it, an edition is about to be exhausted,—to the care of the Legislation Minister, under the direction of the Legislature, it will belong, as per Art. 12, in what parts soever the *corrective* mode of amendment has been employed, to substitute to it the *re-editive*. In every re-edition, the names, as per Art. 57, will be preserved: to the end that, to the people at large it may at all times be known, in what manner as to the several matters in question these their several trustees have executed their trusts.

Instructional. Ratiocinative.

Art. 59. Grounds for the expectation, that the provision hereby made for the keeping the Pannomion clear of unsymmetrical matter, and thereby for the conservation of its aptitude in respect of form, will be effective:—

I. The option being left to every person to submit his proposed law, in the symmetrical form, no person can be at a loss to frame his proposed law, either in the *corrective* or *re-editive* mode: for, so simple is the form of applying an amendment to an already existing regulation, or assemblage of regulations, that it varies not from that, the observance of which, (in every community, in the management of whose affairs, the people at large have any share,) is habitual.

II. Scarcely in any existing code, is there any want of ordinances, to such a degree comprehensive, as that by any new ones introduced, an alteration will, in some way or other, be produced in the efficiency of some one or more of them. For, suppose, for example, an ordinance in these words—*Whatsoever act is not expressly prohibited by some article in this code, every person is at liberty to perform.* So long as an enactment to this effect continues in force, no prohibitive law can be passed, without bearing relation to this law, and applying limitation to the efficiency of it.

III. In the present code, more than ordinary care is taken to secure, to the assemblage of ordinances contained in it, this all comprehensive quality: so, therefore, will there be in every other code enacted in conformity to it.

IV. It being by the supposition, as per Art. 19, made the duty of the Legislation Minister, to examine in this view every proposed law on its being proposed, scarcely can it be supposed

that he will not, sooner or later, see on what clause or clauses of the Pannomion in its then existing state the several clauses in the proposed law bear, in such manner as to alter the effect of them; or that in penning amendments, he can be at any loss, how to keep his language conformable to that which he finds therein employed.

V. He cannot apply his mind to the adaptation of an amendment to any one clause therein, without feeling the necessity of applying it at the same time to the looking out for all such other clauses, on which it bears as above.

VI. By the knowledge that his draft will thus undergo the scrutiny of the official functionary, every person who has to draw up a proposed law, will naturally be engaged to give to it, to the best of his power, the requisite symmetry; lest, for want of it, the progress of such his proposed law, should receive obstruction, and his own deficiency, in respect of appropriate aptitude, be at the same time brought to view.

VII. All along, in compliance with the provisions in Ch. xii. JUDICIARY COLLECTIVELY, Section 20, *Judges' Eventually-emendative function*, amendment-proposing Reports will becoming in from the Judiciary Department: and notices of them immediately published in the Government newspaper, as per Art. 55.

VIII. So also will the like demand be producing the like supply, by means of the local ordinances emanating, as per Ch. xxx., from the several Sublegislatures.

Thus, on every occasion, will the eyes of all persons concerned, be directed to the care of securing to the matter of the Pannomion, with the addition of any such improvements as it may lie open to, whatsoever degree of symmetry it was originally invested with.

Instructional. Exemplificational.

ART. 60. Of matters which, though properly belonging to the Judiciary Department, are in English practice exclusively and constantly taken cognizance of by the Legislative Department,—every Code, framed in conformity to this present Code, will be kept clear by appropriate arrangements. Examples are the following:—

1. Laws, applying remedy by divorce, in individual cases of *adultery*.
2. Laws, for authorizing change of property from one shape into another, on the occasion of *family settlements*.
3. Laws, for the division of common lands.

Instructional.

ART. 61. Of matters properly belonging to the local Sublegislatures, that part of the Pannomion, which contains the matter, coextensive with the whole territory of the State, will in like manner be rendered and kept clear.

Exemplificational.

ART. 62. In a monarchy, for the all-comprehensive and glaring evils attached to the arrangement, which gives to the Monarch the exclusive initiative in legislation, the obvious but sole, howsoever inadequate compensation, is the exclusion thereby put upon the confusion resulting from the possession of it, by every member in a Legislative Body. To the evils attached to this exclusive initiative, an obvious palliative is the allowing to the body, if one, and to each of the two bodies, if two, of the Legislature, faculty of making known, in general terms, the substance of any proposed law or mass of law, which it is its desire to see receive the effect of law. To allow this faculty to the body is to allow to individuals, and if no exception be made to every individual, that introductory faculty, without which the principal faculty cannot be exercised: to wit, the right of motion-making, to the effect of proposing, in substance, and thence even in terms, whatever it be, the wished-for law. Supposing the people to possess, by any means, a certain degree of influence in the legislative body,—a result, not altogether incapable of being sooner or later brought about, under such a form of Government, is a state of things preferable to that in which the liberty of giving introduction to a proposed law is possessed alike by every member.

Examples of a state of things, in which something like this effect has been brought about are not altogether wanting.

In a mixed Monarchy and a representative Democracy, the obvious, and for some time unavoidable, result, of the equal and unlimited faculty of initiation in the hands of every member, is that chaotic state of the body of the law which, under both these forms of government, has hitherto been everywhere visible.

Of this chaos, the most eminently conspicuous exemplification is that which is presented by the body of English Statute Law. With this liberty unrestrained, supposing the whole rule of action (real and fictitious law taken together) reduced within that moderate compass, within which it is not altogether incapable of being reduced,—still, sooner or later, the liberty in question, if no restraint were put upon it, would suffice, for the production of a fresh chaos.

SECTION III.

Army Minister.

Enactive.

ART. 1. To the Army Minister, under the Legislature and the Prime Minister, it belongs, to give at all times execution and effect to the matter of the Army Code: and to the temporary orders from time to time emaning from the Prime Minister.

Enactive.

ART. 2. In regard to the professional army, to this purpose it belongs to him to exercise under the direction of the Prime Minister, as to all *persons*, in so far as employed in army

business, the *locative, suppletive, directive,* and *dislocative* functions: as to his own office, the *self-suppletive* function: as to *things,* in so far as thus employed, (but in concert with the Finance Minister) the *procurative, custoditive, applicative, reparative, transformative,* and *eliminative* functions: as to *persons* and *things,* the *inspective*: as to *persons, things* and *occurrences* thereto belonging, the *statistic, recordative, publicative,* and *officially-informative:* as to *states of things, ordinances,* and *arrangements,* the *melioration-suggestive.*

Enactive.

Art. 3. So, in particular, the *instructive* function: as exercised by directions given, in relation to the military exercise, whether singly performed or in bodies.

Enactive.

Art. 4. In regard to the non-professional army, it belongs to him to exercise at all times, the *inspective, statistic, recordative,* and *melioration-suggesting* functions: and incidentally, the *locative, suppletive, directive, instructive, dislocative, procurative, custoditive, applicative, reparative,* and *eliminative* functions, according to the arrangements made from time to time by the Legislature, as between the Prime Minister and the Sublegislature.

Instructional. Exemplificational.

Art. 5. Examples of the things which are the subjects of these functions, are the following:—

I. Things moveable.

1. Arms used without fire: as swords and pikes.

2. Small fire-arms portable by men: as muskets and pistols, with accoutrements and ammunition.

3. Fire-arms, portable by beasts only: as horse artillery.

4. Large fire-arms, not portable, but only drawable: as cannon and mortars, with their carriages and ammunition.

5. Provisions.

6. Clothing.

7. Horses, and other beasts, ridden, or drawing.

II. Receptacles moveable.

8. 1. Baggage wagons,

9. 2. Pontoons, for crossing rivers and other waters.

III. Receptacles immoveable.

10. 1. Barracks, for lodgment of troops.

11. 2. Army hospitals.

12. 3. Storehouses.

13. 4. Fortifications.

Section IV.

Navy Minister.

Enactive.

Art. 1. To the Navy Minister, under the Legislature and the Prime Minister, it belongs, to give at all times execution and effect to the matter of the Navy Code, and to temporary orders, from time to time, in relation to navy business emaning from the Prime Minister.

Enactive.

Art. 2. To this purpose, in regard to the stipendiary branch of the Sea Defensive Force, armed or unarmed, under the direction of the Prime Minister, it belongs to him to exercise, as to all *persons,* in so far as employed under him in navy business, the *locative, suppletive, directive,* and *dislocative* functions: as to his own office, the *self-suppletive:* as to *things* moveable, in so far as thus employed, (but in concert with the Finance Minister,) the *procurative, custoditive, applicative, reparative, transformative,* and *eliminative* functions: as to *persons* and *things,* the *inspective;* so as to *persons, things,* and *occurrences,* the *statistic recordative, publicative* and *officially-informative;* as to *states of things, ordinances,* and *arrangements,* the *melioration-suggestive.*

Exemplificational.

Art. 3. Examples of things which are the subjects of these functions, are the following:—

I. Things moveable.

1. Arms, provisions, and clothing, as per Section 3, Art. 5.

2. Navigable vessels of all sorts and sizes.

3. Naval stores for the equipment of do.

II. Things immoveable.

4. 1. Slips for the building of navigable vessels.

5. 2. Docks, for reparation and outfitting of do. after return from service.

6. 3. Jetties, for giving facility to the approach of large vessels for reparation or outfit.

7. 4. Harbours: with Quays, Moles, Breakwaters, and all other appurtenances thereto belonging.

8. 5. Arsenals.

9. 6. Dock-yards.

10. 7. Storehouses.

11. 8. Beacons.

12. 9. Buoys.

Enactive.

Art. 4. In regard to navigable vessels belonging to individuals or bodies of individuals, he exercises the *inspective, statistic, recordative,* and *melioration-suggestive* functions: exercising the *inspective, statistic* and *recordative* functions under any such heads as shall from time to time have been prescribed by the Legislature.

Ratiocinative. Instructional.

Art. 5. In two cases, the aggregate of the maritime stock in the hands of individuals, is a fund or source applicable in augmentation of the aggregate stock in the hands of the government for the use of the public.

1. On any occasion by free consent on the parts of all parties interested.

2. In case of military necessity, even without consent, on the part of any party interested.

SECTION V.

Preventive Service Minister.

Enactive.

ART. 1. To the Preventive Service Minister, it belongs to give, under the Prime Minister, execution and effect to all ordinances of the Legislature, in so far as they have for their object the prevention of calamity; or of delinquency, otherwise than by exercise of the functions belonging to the Judiciary.

Enactive.

ART. 2. To this purpose, it belongs to him, under the direction of the Prime Minister, to exercise, as to all *persons* in so far as employed in the Preventive Service, the *locative, suppletive, directive* and *dislocative* functions; as to his own office, the *self-suppletive* function; as to *things*, in so far as thus employed, the *procurative, custoditive, applicative, reparative, transformative*, and *eliminative* functions: as to *persons* and *things*, the *inspective;* as to *persons, things*, and *occurrences*, thereto belonging, the *statistic, recordative, publicative*, and *officially-informative:* as to *states of things, ordinances*, and *arrangements*, the *melioration-suggestive.*

Exemplificational.

ART. 3. Examples of the principal calamities, to which prevention is capable of being applied, under the care of government, are as follows:

1. Collapsion: namely of the natural sort, in large masses, or of edifices in a ruinous state; or by means of earthquakes.
2. Inundation.
3. Conflagration.
4. Disease and mortality, the results of unhealthy and unmedicated situations.
5. Unhealthy employments, the unhealthiness of which is capable of being removed or lessened by appropriate arrangements.
6. Contagious disease.
7. Dearth and famine.

Exemplificational.

ART. 4. Examples of arrangements for the prevention or mitigation, of calamity in the above shapes, are as follows:

1. Against collapsion,—of earth, in hilly or mountainous situations, precautionary surveys: of edifices, particularly in towns, precautionary surveys: for reparation, or demolition of ruinous ones; also precautionary arrangements in the construction of new ones.
2. Against inundation,—surveys of bridges, dykes and embankments; also arrangements for the draining of lands.
3. Against conflagration,—precautionary construction of edifices: precautionary fabrication, custody and conveyance of gunpowder and other explodible substances: precautionary stowage and custody of spontaneously combustible vegetable matters in warehouses: the employment of precautionary operations and instruments in mines: Fire Insurance Associations.
4. Against suffocation in mines and manufactories,—precautionary arrangements and monitions.
5. Against disease and mortality from putrid water, naturally accumulated, drainage; from putrid water, artificially accumulated, drainage in enclosed tunnels.
6. Against disease and mortality from contagion,—temporary prevention or restriction of intercourse of persons or goods, with the persons, receptacles, or commodities, known or suspected to be the seats of a contagious disease.
7. Against disease and mortality from the consumption of articles of food or drink, in a state regarded as dangerous to health,—arrangements for preventing the vent of them.
8. Against disease and mortality, from medicinal and other drugs, liable to produce the effect of poisons,—precautionary restrictions on the vent of them: as for example, keeping them in cabinets under lock and key, with the word *Poison* written on them.
9. Against extraordinary scarcity of necessaries,—precautionary supplies, in so far as freedom of trade is inadequate to the purpose.

Exemplificational.

ART. 5. Examples of things belonging to the department of the Preventive Service Minister are the following:

I. THINGS IMMOVEABLE.

I. *Against Delinquency, and Calamity by fire.*

1. Offices for Police Directors and their subordinates.
2. Police Station-houses.
3. Receptacles for Fire-Engines, Ladders, and Fire-Escapes.

II. *Against Inundation.*

1. Dykes and Dams.

III. *Against Contagion.*

1. Lazarettos.

IV. *Against extraordinary scarcity.*

1. Government Magazines.

II. THINGS MOVEABLE.

1. Vehicles.
2. Beasts of draught and saddle.

Instructional.

ART. 6. In relation to the Defensive Force Service and the Preventive Service, the Legislature will consider, how far, by a mixture of Defensive Force Functionaries with Preventive Service Functionaries, the advantages of a stationary with those of a migratory body, may be combined, and the two branches of the official establishment rendered mutually subservient, each to the purpose for which the other is principally instituted.

Instructional.

Art. 7. Under the Legislature, this will be matter of special consideration for the Prime Minister. He will accordingly, if he sees reason, unless inhibited by the Legislature, attach from time to time, to the Preventive Service, (subjecting them for the time to the direction of the Preventive Service Minister,) certain portions of the stipendiary Defensive Force, Land or Sea Force, or both, as occasion may require.

Ratiocinative.

Art. 8. I. *Advantages to the Stipendiary Defensive Force,* more particularly the *Land Force.*

1. Those from the employment-extending principle, as per Ch. x. Defensive Force, Section 2. *Leading Principles.*

2. Those, from the time-occupying principle, as per Ch. x. Section 2.

3. Appropriate acquaintance with the territory in a military point of view, thence proportionable aptitude as to the purpose of defending it, against an invading enemy. In point of extent, the value of this advantage would increase, with the frequency of the migration. Nor would it proportionably decrease, in respect of correctness and completeness, within each portion of territory: for, sufficient for the military purpose would be a much smaller portion of the time of these military auxiliaries, than would naturally be applied to the use of the Preventive Service.

Ratiocinative.

Art. 9. II. *Advantages to the Preventive Service.*

1. Those resulting from the natural pre-eminence of the military functionaries, in respect of the qualities of vigilance, punctuality of obedience, promptitude of obedience, activity, simultaneity of obedience, and intrepidity.

2. Those resulting from the additional security, which such admixture will naturally give, against sinister connexions, between the functionaries and the internal adversaries, against whom they are employed to combat. Of this security, the degree and value, in the case of each body, would be inversely as the length of time during which it continued stationed in the same place.

Ratiocinative.

Art. 10. There seems to be but one qualification, in respect of which, functionaries belonging to the Defensive Force Service, land and sea, according to local circumstances, included, would not naturally possess more aptitude, with relation to the Preventive Service, than those would who are exclusively attached to this last-mentioned service: and this is *local knowledge,* including that of the characters, family circumstances, abodes and haunts of individual delinquents, and persons most in danger of falling into delinquency. But if of each military functionary's time, one portion being employed in active service in this shape, another were employed in the performance of the military exercises, appropriate aptitude with relation to military service, might thus be continued unimpaired. As to the advantage derived from acquaintance with the characters, family circumstances, abodes and haunts of delinquents and persons liable to become delinquents, a due admixture of the migratory, with the stationary functionaries, might afford this advantage, and at the same time obviate the danger from sinister connexion.

Exemplificational.

Art. 11. Examples of subject-matters of such local knowledge, are—

1. Statistic circumstances: sites of the several habitations, thence abodes, of the respective householders, with their inmates of both sexes and all ages. Of these particulars, an adequate degree of notoriety would be necessitated, and effected, for the purposes of Election Service, as per Election Code, Section 10.

2. Moral circumstances: disposition of the several inhabitants, as resulting from habitual sources of livelihood and other occupations.

3. Circumstances purely topographical. Condition of the territory in respect of plains, hills, and mountains,—rivers, lakes, and seas,—soil, whether sandy, clayey, chalky, gravelly, rocky, &c., and natural productions,—ground woody, or woodless.

Of the knowledge of these last-mentioned particulars, the use is, the giving facility to the eventual accersition or say hither-calling, of individuals whose attendance is required, with or without such or such articles of his property, for the purpose of evidence or justiciability, and in case of need, the prehension of the supposed delinquent, or other defendant.

With the benefit of all these helps, scarcely would any band of malefactors be formed, whom the functionaries so employed, would not know where to find, together with the appropriate evidence requisite for their conviction.

Ratiocinative.

Art. 12. A consideration that will not escape observation, is—that, as to seduction of functionaries by sinister connexion with delinquents, the danger is considerably greater, in the case of contrabandists, than in the case of delinquents at large. In the case of the contrabandist, the mischief produced, is not so obvious and conspicuous, as in the case of most other sorts of malefactors. The community is indeed injured: but the community is an ideal and invisible being, of too aërial a texture, to be grasped by a mind of ordinary texture: the fair trader injured is indeed a real and visible being, but seldom is he determinate. Seldom is it known to what contrabandist any fair trader is indebted for the suffering which, by this or that one of his operations, the contra-

bandist has produced. The consequence is—that, against the contrabandist, no such antipathy points itself as against the robber, the thief, or even the obtainer by false pretences: much less, any such antipathy as has place in the case of the housebreaker, or the assassin, in whose instance homicide has been employed, either for perpetration, or for concealment, of an enterprise of indiscriminating depredation.

SECTION VI.

Interior-communication Minister.

Enactive.

ART. 1. To the Interior-communication Minister, it belongs to give, under the Prime Minister, execution and effect to all ordinances of the Legislature, as to the means employed by Government for facilitating the communication between one part and another of the territory of the State; navigable vessels used in sea-service excepted.

Enactive.

ART. 2. To this purpose, it belongs to him, under the direction of the Prime Minister, to exercise—as to all *persons*, in so far as employed by Government, as above, the *locative*, *suppletive*, *directive*, and *dislocative* functions;—as to his own office, the *self-suppletive* function;—as to *things*, in so far as thus employed, in conjunction with the Finance Minister, the *procurative*, *custoditive*, *applicative*, *reparative*, *transformative*, and *eliminative* functions;—as to *persons* and *things*, the *inspective*;—as to *persons*, *things*, and *occurrences* thereto belonging, the *statistic*, *recordative*, the *officially-informative*, and *publicative*;—as to *states of things*, *ordinances*, and *arrangements*, the *melioration-suggestive*.

Enactive.

ART. 3. In regard to such instruments of communication as belong to the public, under the charge of the Sublegislatures, he exercises the *inspective*, *statistic*, *recordative*, and *melioration-suggestive* functions.

Enactive.

ART. 4. So, in regard to such as belong to individuals, or bodies of individuals.

Exemplificational.

ART. 5. Examples of things belonging to this Subdepartment are the following:—

I. THINGS IMMOVEABLE.

1. Roads: whether in the open country, or in a town.

2. Lakes, Rivers, and the beds of both, when dry.

3. Artificial Canals, with the Locks, Underground Water Tunnels, and other works thereto belonging.

4. Bridges and dry Tunnels.

5. Aqueducts: conveying water.

6. Toll-houses, for the collection of toll-money, for the use of any of the above instruments of communication.

7. Letter Post-Houses.

8. Carriage Post-Houses.

9. Edifices belonging to Telegraphic Stations.

10. Inns for the use of Travellers.

II. THINGS MOVEABLE.

1. Vehicles of all sorts, habitually employed in the conveyance of passengers, or goods, or both.

2. Beasts of conveyance so employed.

SECTION VII.

Indigence Relief Minister.

Enactive.

ART. 1. To the Indigence Relief Minister, under the Legislature and the Prime Minister, it belongs to give execution and effect to all institutions, ordinances, and arrangements, emaning from the Legislature, in relation to the relief of the Indigent.

Enactive.

ART. 2. To this purpose it belongs to him to exercise, under the direction of the Prime Minister,—as to all *persons*, in so far as employed under the direction of Government, in the business of affording such relief, the *locative*, *suppletive*, *directive*, and *dislocative* functions;—as to his own office, the *self-suppletive* function;—as to *things*, in so far as thus employed, the *procurative*, *custoditive*, *applicative*, *reparative*, *transformative*, and *eliminative* functions;—as to *persons* and *things*, the *inspective*;—as to *persons*, *things*, and *occurrences*, the *statistic*, *recordative*, *publicative*, and *officially-informative*;—as to *states of things*, *ordinances*, and *arrangements*, the *melioration-suggestive*.

Enactive.

ART. 3. So, to exercise, in relation to all such institutions and establishments as, for this purpose, are or shall be on foot or in progress, at the expense or under the direction of any sublegislatures, individuals, or bodies of individuals incorporated or otherwise associated for this purpose,—the *inspective*, *statistic*, and *melioration-suggestive* functions.

SECTION VIII.

Education Minister.

Enactive.

ART. 1. To the Education Minister, under the Legislature and the Prime Minister, it belongs to give execution and effect to all institutions, ordinances, and arrangements, emaning from the Legislature, in relation to the subject of Education.

Enactive.

ART. 2. To this purpose, it belongs to him to exercise, under the direction of the Prime Minister,—as to all *persons*, in so far as employed under the direction, or at the expense

malarial function. To this function exercise will be given, by keeping under review all such local situations, as are liable to harbour or give rise to exhalations detrimental to health.

Of the sources of such exhalations, examples are the following:—

1. Lands which, to whatsoever proprietors belonging, are habitually or occasionally covered with stagnant water.
2. Mines, considered in respect of such inflammable or dangerously respirable gases, as they are liable to contain.
3. Common sewers and drains.
4. Places of interment.
5. Theatres and other similarly crowded places of public entertainment.
6. Manufacturing establishments, considered in respect of the several ways by which they are liable to deteriorate the air, by the several modes in which the operations belonging to them are respectively carried on.

Enactive. Expositive. Instructional.

ART. 17. IV. *Health-regarding-evidence-elicitative-and-recordative function.* To this function exercise will be given by the elicitation and recordation of the documents following:—

1. *Bills of Mortality.* The matter belonging to these documents he will receive from the Local Registrars of the several Bis-sub-districts: in virtue of their several functions,—*death-recordative, marriage-recordative, birth-recordative, maturity-recordative, and insanity-recordative*, as per Ch. XXVI. LOCAL REGISTRARS, Sections 5, 6, 7, 8, 9. On this occasion, separate notice will be taken, and report made of the state of mortality and disease, in the several Hospitals and Establishments, under the management or inspection of the *Army Minister*, the *Navy Minister*, the *Preventive Service Minister*, the *Indigence Relief Minister*, and the *Education Minister*.

2. From the several different places, *Registers of the Weather*, in so far as habitually framed and preserved in the several establishments above-mentioned; also from any other public sources, from whence they may conveniently be procurable: and from private sources, so far as procurable from those sources, with the free consent of the individuals interested.

Enactive. Expositive.

ART. 18. V. *Appropriate custoditive function.* In the exercise of this function, he has charge in chief of all medical *museums*, belonging to Government.

Instructional. Exemplificational.

ART. 19. Of the contents of a Medical Museum, examples are the following:—

1. Anatomical Preparations.
2. Chirurgical Instruments.
3. Specimens of the Materia Medica, preserved for standards of comparison.
4. Herbaries.
5. Medical Books and Graphical imitations.
6. Registers of the Weather, and Instruments for the formation of such Registers.
7. Mortality Reports, as above.
8. Models of the human form, in its natural state.
9. Models of distortions.

Enactive. Expositive.

ART. 20. VI. *Aptitude-securing function.* In the exercise of this function, to the Health Minister it will belong to watch over the aptitude and efficiency of the application made, of the *Probationary Examination* system, (as per Ch. IX. MINISTERS COLLECTIVELY, Section 16, *Locable who*,) with reference to all aspirants to those offices, the functions of which, are exercises of the art of medicine, in any of its several branches, and to whatsoever subject applied: in such sort that, by the operation of sinister interest,—whether self-regarding, sympathetic, or antipathetic,—no person relatively unapt be admitted, or relatively apt excluded: mindful, that in self-regarding interest, are included not only love of *money*, but love of *ease*.

He will, therefore, preside at all such examinations, having for Assessors, persons three or five, elected by all who, in consequence of Examinations antecedently undergone by them, have received certificates of appropriate aptitude.

Enactive. Expositive.

ART. 21. VII. *Professional confederacy-checking function.* To the Health Minister, under the direction of the Prime Minister and the Legislature,—and with the assistance of the Public-Opinion Tribunal, as per Ch. V. *Constitutive*, Sections 4, 5, it will especially belong, to be upon the watch against all injury to the health of the community, by the operation of particular interests, in the breasts of medical practitioners, at the expense of public interest: (and, as occasion calls, to make report accordingly:) for example, by associations among themselves for the formation of regulations and arrangements, express or tacit, concerning division of labour, rate of payment, terms or mode of attendance, or otherwise.

Enactive. Instructional.

ART. 22. VIII. *Appropriate-publication function.* To this function he will give exercise, by giving, to the result of the exercise given to the several preceding functions, the utmost publicity that can be given to them, consistently with a due regard to public economy in respect of the expense, and to the feelings of persons subjected to the exercise of his several functions: yet not so as to give concealment to delinquency, in whatever shape exemplified.

SECTION XI.

Foreign Relation Minister.

Enactive.

ART. 1. To the Foreign Relation Minister, under the Legislature and the Prime Minister,

it belongs to give execution and effect to all Legislative Ordinances and Government arrangements, having for their subject matter, the intercourse between the Government of this State and the Governments or Subjects of other States: executing the business by himself singly, in so far as no business belonging to any other subdepartment is mixed with it; but in so far as any such mixture has place, executing it in concert with the Minister of the subdepartment to which it belongs.

Enactive.

Art. 2. To this purpose, it belongs to him, under the direction of the Prime Minister, to exercise,—as to all other *functionaries*, in so far as employed in this subdepartment, the *locative*, *suppletive*, *directive*, and *dislocative* functions;—as to his own office, the *self-suppletive*;—as to *things*, in so far as thus employed, in concert with the Finance Minister, the *procurative*, *applicative*, *reparative*, *transformative*, and *eliminative* functions;—as to *persons* and *things*, the *inspective*;—as to *persons*, *things*, and *occurrences*, the *statistic*, *recordative*, *publicative*, and *officially-informative*;—as to *states of things*, *ordinances*, and *arrangements*, the *melioration-suggestive*.

Enactive. Expositive.

Art. 3. *Negotiative function.* In the exercise of this function, under the direction of the Prime Minister, he holds communication:—

1. With agents of all classes, commissioned by the governments of foreign states, to hold communication with the government of this state, within the dominions of this state.

2. With Agents commissioned from this Subdepartment, to act in the dominions of foreign states.

3. With the governments of such foreign states, whether directly, or through the medium of Agents from this government, as above.

Enactive. Expositive.

Art. 4. *Missive function.* In the exercise of this function, he despatches to foreign parts all letters and other documents, written or other than written, to whomsoever addressed, relative to the business of this Subdepartment.

Enactive. Expositive.

Art. 5. *Epistolary acceptive* or *receptive function.* In the exercise of this function, he receives all letters and other documents, written or other than written, relative to the business of his department: and this, as well from persons at a distance, whether it be in the dominions of this or in those of any foreign state, or from persons who, at the time, are within reach of oral conference.

Enactive. Expositive.

Art. 6. *Hospitial function.* In the exercise of this function, he has charge of such reception and entertainment, as is given to any such foreign Agents, as above: having care, that they be secured and continued in the enjoyment of all privileges properly belonging, and prevented from assuming or enjoying privileges not properly belonging, to their respective stations.

Exemplificational.

Art. 7. Examples of the different classes and grades of Agents commissioned from one political state to act in another, are the following:—

I. For general purposes, constantly or incidentally resident.

1. Ambassadors extraordinary.
2. Ambassadors.
3. Ministers plenipotentiary.
4. Chargès d'Affaires.

II. Constantly resident for the special purpose of the affairs of commerce.

1. Consuls, at the superordinate stations.
2. Vice-Consuls, at the several subordinate stations.

III. Occasionally resident for miscellaneous special purposes.

1. Commissioners.

Enactive.

Art. 8. In the exercise of his locative function, under the direction of the Prime Minister, he locates and dislocates Agents of the several classes and grades, as per Art. 7, commissioned to act for this state in foreign parts.

Exemplificational.

Art. 9. Examples of *things* belonging to this subdepartment are the following:—

I. Things immoveable.

1. The edifice or apartment in which the documents belonging to this subdepartment are kept, and in which the subminister, and the subordinates under his direction, are stationed, while occupied in their official business.

2. The edifice or apartment, if a different one, in which reception is given to foreign Agents, as above-mentioned.

3. The residences of the several foreign Agents, in respect of the care requisite in relation to their privileges, as above.

II. Things moveable.

4. 1. The several navigable vessels, if any, which, belonging to this state, constantly or for a time, are employed in the conveyance of Agents or despatches from this department, to the territories of this or any foreign state.

Enactive.

Art. 10. In relation to the commanders of such navigable vessels, and their subordinates, in so far as so employed, as above, he exercises, in concert with the Navy Minister, the *locative*, *suppletive*, *directive*, and *dislocative* functions; and in relation to the vessels themselves, the *procurative*, *custoditive*, *applicative*, *reparative*, and *eliminative* functions.

Expositive. Instructional.

Art. 11. In the exercise of his statistic func-

tion, as to observance or non-observance of treaties between this and other states respectively, it belongs to him to note, and with especial care report, all instances, if any, of non-observance of such treaties on the part of this state: and this in a manner no less clear, correct, and complete, than in the instances supposed to have had place on the part of any foreign state.

Expositive. Instructional.

ART. 12. So also as to all injuries known, or on apt grounds suspected, to have been done, by individuals belonging to this state, out of the territories of this state, to the government of, or individuals belonging to, other states: and this, whether from the parties injured, complaints, in relation to such injuries, have or have not as yet reached his cognizance: such injuries excepted, for which it lies within the power of such foreign government to obtain redress, through the powers of judicature.

Expositive. Instructional.

ART. 13. So likewise any instances, in which, by advantage taken of weakness, or distress, any foreign government has been made to render to this government, or this state, service or supposed service, the exaction of which, were it a case between individual and individual would be deemed an act of oppression, as towards the people of that state: more particularly, if it be by forming with this state a permanent treaty, oppressively disadvantageous to such foreign state.

Expositive. Instructional.

ART. 14. In the exercise of his statistic and melioration-suggestive functions, in concert with the Finance Minister, within [—] days after the first day of the Legislation year, he presents to the Legislature a report, exhibiting, under appropriate heads, the state of the intercourse of this state, with the several foreign states, in relation to commerce: showing, in what way the commerce of this state is affected, beneficially or maleficially, by the ordinances, arrangements, and correspondent practices of the several other states; and in what ways the commerce of those several states is in like manner affected by the ordinances, arrangements, and practices of this state.

SECTION XII.

Trade Minister.

Enactive.

ART. 1. To the Trade Minister, under the direction of the Legislature and the Prime Minister, it belongs to perform all such functions as are needful, over and above those which belong to the Judicial Department, towards giving execution and effect to the laws made for the regulation of trade, and from time to time to report to the Prime Minister, and the Legislature, any such changes as to him shall have appeared requisite.

Expositive. Instructional.

ART. 2. How questionable soever may be the usefulness of laws made for the direct purpose of giving factitious encouragement to trade, either in the aggregate, or in this or that particular branch, in addition to the natural and aptly proportioned encouragement given by the effectual demand,—need, not only for regulations on the subject of trade, but also for frequent changes in the matter of those regulations, cannot fail to be produced by a variety of causes. Examples are as follows:—

I. In the way of discouragement and virtual prohibition, produced by taxation on the prices absolute and comparative, of the subject matters on which the taxes are imposed; whereby, with or without any such design, discouragement is applied to some and encouragement to others, and thereby a need produced for effects of a respectively opposite tendency, for the purpose of obviating and counteracting such effects.

II. Effect produced on the money prices of commodities,—things moveable and immoveable,—by variations in the relative aggregate quantity of money, of various sorts, as compared with the aggregate quantity of commodities destined for sale.

III. Prevention of frauds employed in the giving to things vendible, apparent degrees of value over and above the real, including cognizance of weights and measures:—suggestion of arrangements, with that view, for the consideration of the Legislature.

IV. Regulation of the temporary monopoly, without which, inventions in relation to the subject matters of trade, could scarcely take place: inasmuch as, after having expended capital in the antecedently necessary experiments, rivals by whom no such expenditure had been made, might, by underselling them, derive to themselves the whole of the profit, substituting loss to profit, on the part of the inventors.

V. Application of attention to the means of maximizing the quantity of true, and minimizing the quantity of false, information, of states of things and occurrences, by the knowledge of which the aggregate of profit in trade is increased, and that of loss diminished:—as to which, see Ch. ix. MINISTERS COLLECTIVELY, Section 7, *Statistic Function.*

Expositive. Instructional.

ART. 3. Intimate and constant is the connexion between the operations of the Trade Minister and those of the Finance Minister: proportionably urgent, and indispensable the need, of converse between these two functionaries. But while, in the nature of the case, the Finance Minister is incessantly in action in the exercise of the directive function, in relation to his subordinates, and of the transmissive function in regard to money, in relation to his co-ordinates, in obedience to the exercise made of the directive function by his

superordinates, the Trade Minister, as such, will have little to do in any of these ways: his business consisting chiefly in the exercise of the *statistic, recordative, publicative, officially-informative,* and *melioration-suggestive* functions.

Section XIII.

Finance Minister.

Enactive.

Art. 1. To the Finance Minister, under the Legislature and the Prime Minister, it belongs to give, at all times, execution and effect to the ordinances of the Legislature, as to the fabrication, receipt, and disposal of the money of the State, and to the occasional directions, from time to time, emaning from the Prime Minister.

Enactive.

Art. 2. To this purpose, subject to the direction of the Prime Minister, it belongs to him to exercise, as to all *persons*, in so far as employed in the business belonging to the revenue, under his direction, the *locative, suppletive, directive,* and *dislocative* functions; as to his own office, the *self-suppletive* function; as to *things*, in so far as thus employed, the *procurative, custoditive, applicative, reparative, transformative,* and *eliminative* functions; as to *persons* and *things*, the *inspective:* as to *persons, things,* and *occurrences,* the *statistic, recordative, publicative,* and *officially-informative;* as to *states of things, ordinances,* and *arrangements,* the *melioration-suggestive.*

Exemplificational.

Art. 3. Examples of things belonging to this subdepartment, are the following:—

I. Things immoveable.

1. The *metallic-money mint:* in which are fabricated such portions of intrinsically valuable matter, as are in use for the purpose of exchange.

2. The *paper-money mint:* in which are fabricated such portions of the matter of wealth as consist in promises to transfer metallic money.

Enactive. Expositive.

Art. 4. In the exercise of his statistic function, [ ] days before the last day of the current legislation year, he delivers in to the Assembly his annual report.

Instructional. Exemplificational.

Art. 5. I. *Retrospective* branch. Of the heads and subheads, examples are as follows:—

1. Receipts: Money received in the course of that same year. Subheads: the several taxes and other sources.

2. Expenditure: Money expended in the same period. Subheads: the several departments and subdepartments. Bis-subheads: the distinguishable branches of service belonging to each.

Instructional. Exemplificational.

Art. 6. II. *Present-regarding* branch. Of the heads and subheads, examples are as follows:—

1. Balance in hand, or deficit—the amount of it.

2. Money, which should have been *received,* namely, by Government. Subheads: 1. The several sources from whence they should have been received; 2. And the times at which they ought respectively to have been paid in; 3. With indications of the causes of the failure, definitive or temporary, as the case may be.

3. Money, which should have been *paid,* namely, by Government. Subheads: 1. the several persons or classes of persons, to whom it should have been paid; 2. the several branches of service, on account of which it ought to have been paid, and 3. the times at which it ought to have been paid; 4. with indications of the reasons or causes why, in each instance, it was not paid.

4. To confront with the foregoing, the like statements carried back to the last preceding year, as also to other preceding years, in so far as, to any assignable purpose, useful as well as practicable.

5. For this purpose, in so far as, in the accounts of this or that preceding year, the heads under which the matters are arranged are not the same as those under which the matters of the current year are arranged,—they are brought into coincidence, as far as practicable.

Instructional. Exemplificational.

Art. 7. III. *Prospective* or *Estimate* branch. Of the heads and subheads, examples are as follows:—

1. Demands expected. Heads and subheads, as far as circumstances admit, the same as those of the expenditure in the retrospective part: under each such subhead, the sums belonging to it, in the two different years, placed side by side.

2. Fresh demands expected: that is to say, demands for heads of services, for which there had not been in the current year any expenditure. Heads: the department and subdepartments. Subheads: the several services, designative, in each instance, of the cause of the fresh demand.

3. The like carried on, through any number of successive years, in so far as, to any assignable purpose useful as well as practicable.

4. Supplies expected:—means of answering the above demands. Heads: 1. Money in hand; 2. Money expected. Subheads, as far as they go, the same as under the receipts: the sums belonging to the first year, side by side, as above. Of the differences, whether on the side of increase or decrease, the causes indicated. 3. Extinct sources, with their respective amounts. 4. Fresh sources, with their

respective expected amounts. 5. Estimate of money expected from fresh sources. Subheads: the fresh sources.

Enactive.

ART. 8. To complete the accounts of the year, within [ ] days after the commencement of the new Legislative year, he delivers in his supplemental report, in which the series of the several matters is carried on, to the last day of the expired year, inclusive: inserting any such observations as, in his view, may be instructive.

Expositive.

ART. 9. In relation to money, the functions that may have place, are the following: the Latin word for money being, for distinction's sake, prefixed to the name of each respective function.

1. Ære-fabricative, or money-making.
2. Ære-receptive, or money-receiving.
3. Ære-custoditive, or money-keeping.
4. Ære-postulative, or money-requiring.
5. Ære-applicative, or money-applying.

Expositive.

ART. 10. Application of money, as contradistinguished from custody, is performed by emission, to wit, from hand to hand: which may be, with or without the intervention of middle hands, according to distance or otherwise.

Expositive.

ART. 11. Emission of money may have place, either in payment of a debt due, or without any debt due: in the former case it is *solvitive;* in the other case,—if for an equivalent, *procurative*, if not for an equivalent, *donative*.

Enactive.

ART. 12. The *ære-fabricative*, or *money-making* function, is under the sole direction of the Finance Minister.

Expositive. Instructional.

ART. 13. Money is either intrinsically valuable, or vicariously valuable. Vicariously valuable, becomes equivalent to intrinsically valuable, by the habit and confidence of obtaining property intrinsically valuable, in exchange for that which is but vicariously valuable. In so far as intrinsically valuable, foreign money is exchangeable as well as home-fabricated.

Enactive.

ART. 14. Under the direction of the Legislature and the Prime Minister, it will be among the duties of the Finance Minister to prevent functionaries, in whose hands public money is lodged, from deriving any private benefit from it, at the expense of the public service.

Instructional.

ART. 15. From misapplication of it, thus made, detriment may accrue to the public service, in either of two ways, to wit—

1. By the eventual loss of the principal, in consequence of insolvency, on the part of the custodient functionary.
2. By retardation or frustration of the service, for the purpose of which it is destined to be emitted out of his hands.

Instructional. Ratiocinative.

ART. 16. If without preponderant evil, in the shape of risk of loss, profit can be made by the private custodient, in the way of interest, so may it by the public.

Instructional.

ART. 17. In relation to the quantity of money of all sorts, the Legislature will on each occasion consider, whether it is its desire that that same quantity should receive increase or not. If not, it will so order matters, that for every sum put into circulation in the shape of vicariously valuable money, an equal sum that would otherwise have been in circulation in the shape of intrinsically valuable money, shall be kept out of circulation.

Instructional. Ratiocinative.

ART. 18. In this case, by the substitution, two distinguishable advantages may be obtained.

1. One is, the saving upon the expense of conveyance.
2. The other is, the superior security against spurious fabrication. But for this purpose it is material, if not necessary, that the value assigned to the several pieces, separately taken, should be greater than that of any piece of intrinsically valuable money: and the greater the value, the greater the advantage in this shape; for the greater the value, the fewer the hands it will have to pass through, and the easier it will be to trace it from hand to hand.

Instructional. Ratiocinative.

ART. 19. In this way, but only upon these terms, advantage might be derived, and that very considerable, to the public, from the use of paper money, even supposing the nation not to stand charged with any public debt.

Expositive.

ART. 20. The velocity of circulation is as the number of times that a piece of money of a given amount passes from hand to hand, for an equivalent, in the ordinary way of trade, within a given space of time—say a year.

Instructional. Ratiocinative.

ART. 21. The aggregate quantity, and the aggregate velocity being given, it matters not in regard to prices, in what shape the money has been existing: whether in that of intrinsically valuable money, or that of paper money: *i. e.* promises of intrinsically valuable money performable to bearer on demand, or similar

promises at so many days after date, or after sight.

Instructional.

Art. 22. Modes of payment of which the Finance Minister may have to make choice, are the following:—

1. Paying to each creditor a part of his due, postponing the remainder, with interest, to a time mentioned. Non-payment of interest is insolvency, to the amount: so in truth, non-payment of interest with mercantile profit, to mercantile men.

Instructional.

Art. 23. 2. Establishing an order of priority as between creditors of different descriptions: on determinate and adequately notified grounds.

Ratiocinative.

Art. 24. In the first mode, the injustice is least: to non-mercantile men, who can borrow without humiliation, none: to mercantile men, more or less according to their means of profit, but no more than they ought to keep themselves prepared for, as in dealing with individuals.

Ratiocinative.

Art. 25. Great, in the second mode, is the danger of injustice.

In the choice of favoured classes, two interests require to be considered.

1. Public.

2. Individual.

Sole class in whose favour public interest requires favour, is that of war functionaries in war time, actual or impending: the evil, by deficiency as to them, may involve loss of property, and all other objects of desire to an unlimited extent: as to other classes (one exception excepted) the evil is comparatively inconsiderable.

Ratiocinative.

Art. 26. Excepted class,—the lowest paid in all departments and branches.

Examples:—

1. In Army, Navy, and Preventive Service, —privates.

2. In the other Subdepartments, the merely writing functionaries, in preference to all specially instructed superordinates.

3. In branches in which all are specially instructed, those under direction, in preference to their directors.

Ratiocinative.

Art. 27. Reason. The higher a man's place in the conjunct scales of money, power, and respectedness, the greater in general are his means of supplying temporary pecuniary deficiency, from the amity of those connected with him, by ties of interest, self-regarding or sympathetic.

Instructional. Ratiocinative.

Art. 28. The operation of paying money, shall it be performed by the same person by whom the subject-matters obtained by it are employed, or by a different person?

Answer. By a different person. Better that money should *not*, than that it should be at the disposal of the Minister, for the service of whose department it is needed. Better that in each given place, all payments be made by an appropriate officer, say the *Paymaster*.

Reasons.

I. *Frugality promoted, by saving in the pay of functionaries.*

1. The operation of paying money, indispensably consumes a more or less considerable quantity of time, according to the nature of the money, whether in pieces of larger, or in pieces of smaller value.

2. The operation of paying money requires no particular talent, natural or acquired. The operation of giving employment to the subject-matters obtained by the money, will in many, perhaps in most cases require talent, natural or acquired, or both.

3. For engaging the service of a man possessing appropriate talent, more pay at the expense of government will commonly be necessary, than for the engaging the service of a man not possessing any such appropriate talent. For every purpose, which, while an untalented man could have been employed, a talented man is employed, waste will therefore be committed, to the amount of that sum, by which the talented man's pay exceeds that of the untalented.

Instructional. Ratiocinative.

Art. 29. II. *Frugality promoted: to wit, by saving in quantity of time employed and paid for.*

4. If by the hand of the functionary, for whose use the subject-matter is wanted, the payment of the money, in exchange for which it is wanted, were to be performed, the appropriate business of this talented functionary would be experiencing continual interruption, by his passing alternately from the exercise of the appropriate function, to the exercise of the money-paying function. For much less time than is necessary for the examining and counting of the money, is sufficient for the signing of an instrument or document, warranting and ordering the payment of it.

This reason applies, even supposing talented pay were no greater than untalented pay.

Instructional. Ratiocinative.

Art. 30. III. *Frugality promoted: to wit, by additional security against peculation and embezzlement.*

5. Suppose one person only, occupied, both in procuring the article and paying for it, one person alone would be answerable for the propriety of the payment, and one person

alone, to wit, that same person answerable for the fact of its being paid for the public service. Employ in the business, the two persons in question, they serve, each of them, as a check upon the other. The orderer, by the order, acknowledges and witnesses that he has received the subject-matter for which it is issued: the payer must have this same order as evidence that it is not without just cause, and sufficient warrant, in respect of service rendered to the public, that the money is paid by him: an instrument of receipt might suffice to show that the money is paid, and to whom paid; but it could not in general suffice to show that it is on account of the public service that it is paid.

In either office, should the document relative to the transaction be lost, that belonging to the other may serve as a memorial of it.

Instructional. Ratiocinative.

ART. 31. Receivers and Payers of public money, shall they be the same persons, or different?

Answer. The same; so far as they can be.

Reasons.

Case I. That of the central place of receipt and payment—the seat of Government—the Metropolis. Advantages—

1. Frugality promoted, by one Chief Manager instead of two.

2. Frugality promoted, by one system of guarding instead of two.

3. Frugality promoted, by saving in the article of the building and its appurtenances. For the lodging of a given number of persons, whether residents or occasional visiters, one house of sufficient dimensions will cost less in building and repairs, than two houses of the same solidity, and beauty of appearance. This will be more clearly seen, when applied in detail, to approaches, fences, &c.

4. Frugality promoted, by saving, in fragments of functionaries' time unemployed. Example. In the event of two offices, the quantity of time habitually needed for the business, requires say more than four functionaries' time, but not so much as five: yet must five be paid. The time needed in each, above that of four, is thus half the time of a fifth. Keep the establishments apart, the number of functionaries you must pay is ten; consolidate them, and the number of functionaries sufficient is nine.

Instructional. Ratiocinative.

ART. 32. Case II. That of a Town, at a distance from the Metropolis.

The advantages are,

1, 2, 3, 4, as above.

5. Frugality promoted, by saving of the expense and risk of conveyance. This applies as to all but the difference between the money received there, and the money which should be, or may be made payable there. At the end of a certain period, say a quarter of a year, after deducting the one from the other, conveying the residuum, either to, or from, the central office. If the residuum be on the receipt side, then *to* the office; if on the pay or disbursement side, then *from* the office.

Instructional. Ratiocinative.

ART. 33. Taxes which should be interdicted are—

1. Taxes on the means of political information, in particular on Newspapers. By these the justice of the Public-Opinion Tribunal is perverted, and its force lessened. So likewise by the suppression of evidence, or of the diffusion of it, injustice in all shapes is promoted.

2. Taxes (whether under the name of stamps or fees of court) on judiciary proceedings, involving prohibition of justice—encouragement to injustice.

3. Taxes on medicines. By these bodily pain is inflicted, or even life taken, from all who cannot afford to pay the tax. It is a tax on indigence: a prohibition aggravating the hardships of the indigent.

4. Taxes on insurance against calamity. By these efficient providence is lessened, and thence the number involved in the calamities in question increased.

Instructional. Ratiocinative.

ART. 34. Purchase of instruments of amusement for the rich, with money raised by taxes on rich and poor, is depredation: depredation committed on the poor for the profit of the rich.

Magnificence exhibited by a person at his own expense, is magnificence: exhibited at the expense of others, it is depredation.

Exemplificational.

ART. 35. Examples of depredation in this shape are the following: the purchase-money being all along understood to be that produced by the taxes, or which might have been employed in easement of the taxes.

1. Edifices, although for the use of the public, in so far as rendered costly by ornament.

2. Pictures, statues, and other productions of the imitative arts.

3. Books, valuable no otherwise than for their rarity.

4. Antiquities.

5. Miscellaneous artificial curiosities.

The minds of the rich should not, any more than the bodies, be feasted at the expense of the poor.

Instructional.

ART. 36. Examples of objects which ought not to be confounded in this view with the above, though frequently found in the same collection.

1. Anatomical preparations.

2. Subjects of natural history, in its three kingdoms.

3. Machines and draughts, and models of machines.

From the branches of art and science, of which these articles compose the stock, benefit may alike be reaped by persons of all classes.

Section XIV.

Conflicts of authority, how terminated.

Enactive.

Art. 1. For the prevention of doubt and disagreement, between subminister and subminister, as to the extent of their respective powers, and the detriment which the public service may thence be liable to experience, it will be the care of the Prime Minister, by executive, or eventually emendative subordinances, with reasons annexed, to draw such apt lines of demarcation as the nature of the case admits of, and the general good of the service may from time to time require.

Enactive.

Art. 2. So, where the tenor of this code or the nature of the case requires, that the subministers of two or more subdepartments, should act on the same subject in concert, to take care that, through want of agreement, no detriment to the service, in the way of retardation, or otherwise, shall ensue.

Expositive. Instructional.

Art. 3. The case in which such conflict is more particularly liable to have place, is that in which, for the purposes of their several branches of service, different subministers may, in their respective departments, have need of the service of the same person, or the same individual thing, at the same time. In this case, the preference will require to be given to that particular branch of service, through which, for want of the services of the persons, or the use of the thing, at the time in question, the detriment to the aggregate interest of the community would be the greatest.

Instructional. Ratiocinative.

Art. 4. Evil from foreign adversaries, being in respect of extent naturally the greatest, hence, in time of war, or imminent danger of war, the claim of the Army and Navy services will in general require the preference in comparison of all others.

Instructional. Ratiocinative.

Art. 5. Next to this, the Preventive service: having, as it has for its object, the prevention of evil from internal adversaries, as well as from purely physical calamities.

Instructional. Ratiocinative.

Art. 6. Next to this, the Interior-communication service: especially in respect of the connexion which the object of it is capable of having with the Army, Navy, and Preventive services.

Instructional. Ratiocinative.

Art. 7. The branch, the claim of which will naturally yield to that of any other, is the Domain service. The Domain of the State not being of any use, except in so far as the subject matter of it may permanently or incidentally be applied to use, in a manner beneficial to one or more of those several other branches of the public service.

Ratiocinative.

Art. 8. Note that, on each occasion, for determining the preference, the proper object of consideration is not the general comparative importance of the two branches of service in question, but the comparative detriment likely to ensue to the universal interest, on that particular occasion, for want of the service of the person, or the use of the things in question, whatsoever may be the branch of service, on account of which, the demand has place.

Exemplificational.

Art. 9. Examples:—

1. For the Army service. For commencing, completing, or repairing a fortification, dismantle not a public building, though it be but ornamental, if from other sources materials can be had at little more expense.

2. So, for Navy service. Cut not down trees, serving for protecting lands or edifices against pernicious winds, nor even those serving for recreation or ornament.

Instructional.

Art. 10. It would be no small convenience, if the office of the Prime Minister and the offices belonging to the several subdepartments, were all under the same roof. In this case, if the situation of the Prime Minister's office were central, (the others forming a ring around it,) a set of *conversation tubes*, would enable the Prime Minister to confer with each, and each with any other, without rising out of their chairs.

He who writes this, held conversation once, and without any strain of voice, through a tube of nearer four hundred than three hundred feet in length. The experiment was instituted by him, with a view to a purpose, such as this.

Instructional.

Art. 11. The office of the Justice Minister should rather be remote from, than contiguous to, the above-mentioned cluster of offices. Between the Administrative department and the Judiciary, the less the communication the better. See as to this, Ch. ix. Ministers collectively, Section 26, *Architectural Arrangements.*

Note to Ch. xi. *on the subject of a Religious Establishment, to be paid for at the public expense.*

For the business of religion, there is no department: there is no Minister. Of no opinion

on the subject of religion, does this Constitution take any cognizance. It allows not of *reward* in any shape for the professing or advocating of any particular opinion on the subject of religion. It allows not of *punishment* in any shape for the professing or advocating of any particular opinion on the subject of religion. It leaves to each individual, after hearing any such arguments as he chooses to hear, to decide for himself on each occasion, what opinion has the truth on its side.

No declarations are required, averring exclusive and detailed knowledge of things essentially unknowable, and in relation to which, differences are notoriously universal, and interminable.

In England, true political knowledge is the tree of good and evil: academical death the penalty for touching the fruit of it.

Manifestation of all such knowledge as derived from the free application of the greatest-happiness principle to politics, religion and morals, is the abhorred and dreaded evil, to the exclusion of which all attention and all exertions are directed.

For this purpose, a secondary endeavour is to keep the time of the aggregate of the juvenile population at the universities of Oxford and Cambridge divided between comparatively useless study, and idleness: idleness, although debauchery be the accompaniment of it.

Study, so it be directed to the comparatively useless—in a word, to any but the above-mentioned pre-eminently useful, objects,—has naturally the preference: reason, obvious:—that, by the display of difficulty overcome, the reputation of the place and the system may be preserved from decline.

But to the spectacle of proficiency made in the forbidden branch of knowledge, that of debauchery, as a less evil, will as naturally be preferred.

To one or other of the two desired classes, every student, according to his turn of mind, is thus aggregated: the strong-minded to the uselessly learned class: the weak-minded to the class composed of the stupid, the simply idle, and the debauched.

From all participation in the fund, to the amount of millions a-year, allotted to the purchase of insincerity, who was ever excluded by habitual drunkenness?

Who is there that would not be excluded by heterodoxy? and what is heterodoxy, but nonconformity to the opinions, the profession of which is, under every monarchical government commanded, and which under all those same governments, are at the same time more or less different?

The assumption is that, at the word of command, opinions can turn to the right and left, like legs and arms.

The grand use of what is established under the *name* of religion is to secure insincerity: to secure untrue assent, and to exclude all opposition to opinions howsoever absurd.

To *establish* religion, is to establish *insincerity:* to establish insincerity, is to establish that vice, by which not only vice in every minor shape is served and promoted, but vice swollen into the shape of criminality.

Nothing can be more uncontrovertible than this axiom:—He who, by application made of punishment or reward, discountenances inquiry into the truth of any opinion, declares thereby his persuasion, or at the least his strong suspicion, of the falsity of it: and if by him so simply discountenancing inquiry this persuasion is declared, much more by him by whom the creative power of reward is applied to profession made of it; still more by him, by whom the repressing and extinguishing power of punishment is applied to opposition made to it.

No opinion is there, so erroneous, that will not be embraced, if, for the embracing of it, reward is held out.

Nowhere is anything under the name of religion established in the Anglo-American United States, and where, with such extensively prevalent sincerity, is religion professed, as in those same so happily united States?

In which of them all is it employed as a State engine? In what other political state is it so zealously employed as a support to morality—and in what other state is it a more powerful one?

On the continent of Europe, the restraints upon the study of the most important parts of useful knowledge being the immediate work of supreme power, are more extensively notorious. Means employed, not only withholding of reward, but application of punishment.

Nor yet is the public appropriate examination system undervalued there, or unemployed.

In medicine, rulers see the art and science from which they have most to hope, and least to fear. Accordingly, in that part of the field of art and science, no obstacle being opposed, —examination, to a more or less considerable degree public, is generally in use.

Unhappily for that liberty, without which knowledge is not possible, medical science cannot be cultivated, without close and continual scrutiny into the relation between *cause* and *effect*. In London, in a recent instance, certain enemies of liberty and knowledge beheld in the result of a scrutiny of this sort, a proof of the truth of Atheism: the ruin of the author became thereupon the object of their confederated, but not successful, endeavours. Direct profession of atheism is profession of atheism, and nothing worse. Endeavour to crush a man for the profession of atheism, is virtual confession of atheism, coupled with the practice of insincerity and intolerance. In proportion to every man's love of humankind, and of those virtues on which its felicity depends, insincerity and intolerance of difference in opinion, whatever be the subject, will ever be odious.

CHAPTER XII.

Judiciary Collectively.

Preliminary Observations.

Astonishment and Indignation, are the sentiments which the perusal of this Chapter, not to mention preceding and succeeding ones, can scarce fail to excite in the breast of every reader, who, in any country, is either in possession or expectation, of a situation on any judgment-seat, to a certain degree elevated. The effect is certain: the cause altogether simple. In this part of the present Code, the end in view is the greatest happiness of the greatest number, considered in the character of *justiciables*, as in the French language they are so aptly expressed, and may henceforward in the English.

Of every Code as yet in existence the draughtsman has been some lawyer acting under the conjunct influence of rulers at large, and some lawyer or lawyers of the highest grade. The persons whose greatest happiness it has of course had in view, and to whose greatest happiness the happiness of all other persons has to the utmost possible extent been made a sacrifice, have been the persons under whose influence the draught has been penned.

A remark which will with equal certainty be at the same time made is,—that no person possessed of adequate appropriate aptitude, or rather, forasmuch as that expression will be too precise, no person of honour would give his acceptance to an office loaded with such burthens. The answer is, that for far inferior benefits, obligations far more burthensome, are by persons in great numbers, everywhere not only submitted to, but eagerly coveted and aimed at: and if moral aptitude be taken into account, the least apt would be higher in the scale than the highest of those by whom the situation has commonly been everywhere filled.

Of appropriate aptitude with relation to the business of these several offices, which will be the most strongly probative evidence? acceptance of the office on these terms; or, strutting demeanour, by looks and boasting phrases, declaratory of the indignation pretended to be felt at the thought of a man's being capable of giving acceptance to it on such terms?

Of utter inaptitude with relation to the functions of it, what more conclusive evidence can be afforded than the determination not to accept of it upon these terms?

In England, the enormity of the masses of emolument received by hireling advocates, from the practice of their immoral profession, is held up to view with triumph, as an adequate and irrecusable reason for correspondent enormity in the emoluments attached to the office of judge of highest, and next to highest grade. For this excess, though no adequate reason, there is still a plausible one: the incomprehensibility of the law, and the presumption that by the advocate who has had most practice, the largest stock not only of appropriate knowledge, but of appropriate judgment, will be possessed.

In the present Code, the grand demand for appropriate knowledge on the part of judges, will be done away, by the substitution of proposed real law, to the at present accepted fictitious law.

That which mankind may stand perfectly assured of is—that under the present Code of real law, as under every other, by the functionary in the several classes and grades, his own interest in every shape, and in particular in the shape of ease, will be pursued to the utmost of his power, whatsoever becomes of that of the greatest number. Of the proposed Code, in this as in every other part, the object is accordingly so to order matters that in the pursuit of his own interest in those several shapes, at the expense of the greatest number, the difficulty he experiences may be maximized, and the facility given for the effectual obstruction of all such endeavours be minimized.

If, for the accommodation of a single individual, matters should be so arranged, as that there should not be a moment of time, during the whole of his life, without his having persons in any number in attendance upon him,—in an arrangement of this sort, supposing the individual capable of affording the expense, scarcely would any person see anything extraordinary —anything to disapprove. Yet for the benefit of all,—of the myriads or the millions, a few exceptions excepted, and those narrow and recent ones, afforded by what is called Police, in no Code of law has any such arrangement been made.

For the accommodation of individuals, service in all imaginable shapes is to be had on all days and at all hours; and for ordinary remuneration, other individuals there are, each of whom is on all days and at all hours ready and glad to render it: witness all those whose business it is to supply diet, medicine, and conveyance.

From what cause this difference? From what but the utter falsity of all those professions of regard for the happiness of subjects, of which rulers have in all governments been so lavish: professions, the utterance of which has been so confident, and the contradiction so uniformly true and therefore so intolerable.

As to the Judicial Establishment, so intimate is its connexion with the system of procedure, that in any explanation given of the former, it is not possible to avoid bringing into view, to an extent more or less considerable, the intended purport of the latter.

Having for its superordinate end, the maximization of the security afforded by the services of the functionaries belonging to the judiciary system, it sets before itself in the first place two conjunct subordinate objects, namely maximizing the number of those to whom that benefit is imparted: and rendering and keeping at all times, adequate to that purpose, the number of

the functionaries employed in the imparting of it.

But here, at the outset, a great difficulty presents itself. To those who for this purpose are called upon to pay attendance on a judge, the obligation of paying such attendance will unavoidably be productive of vexation or expense, or both, to an indefinite extent. On the other hand, true it is, that if it be matter of vexation to be obliged to be attendant at a judicatory in the character of defendant, such to a certain degree it cannot but be, to attend at that same place in the character of pursuer. But a state of things which to an indefinite extent may have place, is this—namely, that while to this or that man, in the character of defendant, attendance for the time in question, is a very serious evil; to this or that man, in the character of pursuer, it shall be no such evil: on the contrary, when coupled with the benefit expected, in this or that shape from the evil to which the defendant is thus subjected, or from the result of it, it may in his eyes be a good. As for instance, where the suit has for its object the obtaining from an individual, property in some shape or other by an unjust claim, by means of his inability through indigence, to employ against it the necessary means of self-defence: or, more simply, for the gratification of vengeance, the reducing him by means of the expense to a state of indigence.

Such being the state of the case, if the door of the judicatory is thus thrown open, and the faculty is given to each individual in the character of pursuer, to compel the attendance of persons of every condition in any number to meet him in the presence of the judge in the character of defendants, and no restraint is laid upon the abuse of this faculty, the judge, by means of his official services, may in this manner be rendered, how unwillingly soever, at the pleasure of any evil-doer, the instrument of evil, to any amount.

Happily to this evil, the nature of the case furnishes a remedy, alike obvious, simple, and effectual: a remedy the sufficiency of which is, to a certain extent, demonstrated by universal experience. This remedy is, the subjecting the author of such vexation to pecuniary loss.

Thus far, such is the course which has been pursued in all systems of judicature as yet established: and the result is that no vexation approaching in amount to the vexation just above brought to view, has in any of them been seen to be produced. By every man by whom in the situation of pursuer such vexation is brought upon another man, thus forced in the situation of defendant, pecuniary loss is sustained, in pursuance of the arrangement made for that purpose. This loss consists of, and is imposed upon him in proportion to, the factitious part of the costs of suit: of the money employed by him in the defraying of that part of the charges.

If justice consists in the affording to every man alike, in so far as may be, the protection of the law, by means of the appropriate services of the functionaries of justice employed for that purpose, no system of judicature hitherto established, has justice for its object. If any such system had ever had existence, this is what it would have done.

It would have rendered complete the services of the functionaries employed in the administration of justice.

It would have avoided with the most scrupulous care the adding any factitious expense, vexation, or delay, to those expenses, vexations, and delays, which are natural and unavoidable: it would no more have taken for a subject of taxation a man whose leg had been broken by a fall given him by design, than a man who had suffered the same affliction by a fall experienced by accident.

But that instrument of power which calls itself a Court of Justice has in every community, without exception, had for the object of its institution, not justice, but its opposite injustice: injustice in the shape of depredation and oppression. As to relief to the injured, it has not been the end in view, but only a collateral and unintended result: what good has been done, has been done partly as being, with relation to the evil, an unavoidable accompaniment, partly as a means of reconciling to the infliction of the evil the inconsiderate and deluded multitude.

The proofs of this are conclusive and altogether irresistible: they are shortly these:—

1. Imposition of law taxes: putting out of the protection of the law all those who are unable to pay the tax.

2. Imposition of law fees, payable to the functionaries of justice: functionaries employed in giving such security as is given against injury from internal adversaries: and who might be sufficiently paid by a minute part of the expense employed in the payment of those engaged in giving security against injury from foreign adversaries.

3. Audience refused to the parties in the suit: the defendant not compelled to meet the pursuer in the presence of the judge: nor the pursuer admitted in person to state to the judge his demand, and the foundation on which it rests.

England is, of all countries, that in which depravity in this shape has soared to the highest pitch. It would be alike needless and endless to attempt to investigate the amount of the booty thus regularly made: or the proportions in which it has been shared between the monarch and the judge; or the proportions in which they have contributed to the extraction of it.

The arrangements taken for the gathering in the fruits of this depredation, serve effectually for the prevention of vexation, in so far as the prevention of it is to them an object of desire. Of those whose desire it would be to inflict vexation on their adversaries, all those who cannot afford to have this instrument, are

kept from doing so: and thus far, evil being prevented, correspondent good is done. But to all those who can and will afford to have this instrument of vexation, the use of it is let out accordingly.

To exclude evil, however—to do good in any shape, has never been to them an object of desire: if it had been, they would have excluded all vexatious suits, and all vexatious proceedings on each side. Before any vexation were inflicted by the judge on the defendant, the judge would have seen the pursuer, and taken from him, for this good purpose, those securities, the uses of which are so abundant for good and bad purposes promiscuously.

Thus, then, is the separation made: the evil, the work of design, the greatest part of it; the good, work of design, no part of it.

Meantime, abstraction made of whatever is factitious, and thence avoidable, considerable, and that to a lamentable degree, is in many instances, the expense on one side, of giving the necessary support to a well-grounded claim; on the other side, the expense necessary to effectual self-defence against an unjust one. This bar to justice, though not capable of being removed altogether, might, however, by appropriate arrangements, be removed in a considerable degree. As for the relief of those who would otherwise suffer for want of food, so, for the relief of those who would otherwise suffer for want of justice—that is to say, for want of service due from judicial functionaries, funds might be provided. If appropriate care were wanting, the disposal of such funds might be a source of abuse. But the necessary and sufficient care need not be wanting: and against the abuse to which relief in this shape is exposed, the difficulty would not be near so great, as that of preventing abuse in the disposition made of relief against the want of the means of sustenance.

To those whose desire it were to prevent needless vexation, the means of accomplishing it are sufficiently obvious: in every instance, in as far as possible, let the author of the proceeding be the individual on whom the evil of it falls. If it be for want of due attention that the vexation has been produced, make the author civilly responsible,—impose on him, in so far as he is able to bear it, the burthen of indemnification—of making compensation to the suffering party for the suffering he has sustained: if it be not for want of attention, but on the contrary by reason of attention employed in the endeavour to produce the evil, and without any justificative cause for doing so, make him penally responsible: to the burthen of compensation, if imposed, add ulterior suffering in the name, and for the purpose of punishment if either the case does not admit of compensation, as where there is no individual special sufferer, or the author of the vexation has not wherewith to make compensation, in this case to the loss of so much as it would have been necessary to disburse, to the purpose of making compensation, substitute equal suffering in the name of punishment: in a word, for simple temerity, impose the burthen of compensation; for evil consciousness, add punishment.

A course of this sort would have answered the purpose of justice: but it would not have answered the purpose—it would not have favoured the sinister interest, of the authors of any established system of judicature.

The advice which they gave to one another on this occasion, was extremely simple. Admit all unjust claims, and all unjust defences by which anything is to be got: exclude all just claims, and all just defences by which nothing is to be got. Never was advice more diligently complied with. By the admission given to the injustice, they got money; by the exclusion put upon justice, they got ease.

Section I.

Excepted Judicatories.

Expositive.

Art. 1. By the *Judiciary Establishment*, understand the aggregate of all persons and all things at all times belonging to the Judicial Department: as to which see Ch. iv. *Authorities.*

Expositive.

Art. 2. By *a Judicatory*, understand the aggregate composed of all functionaries at all times employed in the exercise of the aggregate, or say collective judicial functions, within the territory of this state; or in the territory of any other state, in virtue of a commission lawfully emanating from any functionary, exercising any such aggregate, or say collective judicial functions, within the territory of this state. For the elementary judicial functions, of which the above-mentioned aggregate function is composed, see Section 9.

Expositive.

Art. 3. Comprised, accordingly, under the denomination of a judicatory, are—

1. All judges principal, immediate, and appellate, as contradistinguished from judges-depute permanent, and judges-depute occasional; principal, for distinction's sake, to distinguish them from their respective deputes.

2. All judges-depute permanent just mentioned, as to whom, see Section 3, *Judiciary Functionaries*, and Ch. xiv. Judge-Deputes permanent.

3. All judges-depute occasional; as to whom see Section 3, *Judiciary Functionaries*, and Ch. xv. Judge-Deputes Occasional.

4. The Justice Minister: in so far as occupied in the exercise of judicial functions: as to whom see Ch. xxiv. Justice Minister.

Expositive.

ART. 4. By a *single-seated Judicatory*, understand that of a functionary, acting as such, by himself, in the situation of judge, his authority not being shared with him by any other individual in that same situation.

Expositive.

ART. 5. By a *many-seated Judicatory*, understand the fictitious body, composed of functionaries more than one, acting no otherwise than conjunctly in the exercise of the authority belonging to a judge.

Expositive. Ratiocinative.

ART. 6. Under this Code, a few special instances excepted, and in each for special reasons, no many-seated—no other than a single-seated judicatory has place. For the special instances, see Ch. vi. LEGISLATURE; Section 27, *Legislation Inquiry Judicatory;* Section 28, *Legislation Penal Judicatory.* Ch. xv. JUDGE IMMEDIATE DEPUTES OCCASIONAL, Section 5, *Referees deputable.* For the reasons why, these excepted, a single-seated is preferred to a many-seated judicatory, see below, Section 5, *Number in a Judicatory;* and Ch. ix. MINISTERS COLLECTIVELY; Section 3, *Number in an office.*

Expositive.

ART. 7. By *Excepted Judicatories*, understand all judicatories to which, unless in case of special reference, the ordinances contained in chapters from xii. to xxiv. inclusive, are not intended to apply.

These are—

1. Legislational Judicatories, as per Ch. vi. LEGISLATURE; Section 27, *Legislation Inquiry Judicatory;* Section 28, *Legislation Penal Judicatory.*

2. Military Judicatories: or say Courts-Martial, including Army Judicatories: or say, Army Courts-Martial, and Courts of Inquiry, and Navy Courts-Martial, and Courts of Inquiry, as to which, see Ch. x. DEFENSIVE FORCE; Section 13, *Military Judicatories.* For the names of those several exceptions, see those sections respectively: and see below, Section 6, *Fields of Service.*

Expositive.

ART. 8. Understand by a Court-Martial, a judicatory having for the end of its institution, the giving execution and effect to such ordinances as have for their object the applying to the purposes of their destination the services of such functionaries as stand engaged to contribute in an especial manner to the security of the territory of the State and its inhabitants, against hostile aggression on the part of external or internal enemies.

Instructional. Ratiocinative.

ART. 9. In the case of this sort of Excepted Judicatories, the proceedings will not be materially different from those of the ordinary Judicatories: for the best adapted means of coming at the truth, in regard to the relevant facts, are the same in relation to every sort of act. The only change will be that which respects the natural degree of promptitude, and that which regards the situation of the temporary judge. The time by which a judge, whose seat is at a considerable and indeterminate distance, can be called in, cannot be waited for: and the ordinary judge, having little or no acquaintance with the details of the office in question, would probably in the first instance, in respect of cognitional and judicative aptitude, be less apt than the special judge here substituted to him. True it is, that in the case proposed, the cause in which the special judge would act, might without impropriety be termed his own cause: but the facility of appeal being in this case, as in all other cases under the present Code, maximized, the evil would be nominal only, not real and effective: the evil associated in idea with the phrase—Judge in his own cause, having for its origin, the evil which for want of the facility in question, has at all times and everywhere, been exemplified in such disastrous abundance.

Expositive. Exemplificational.

ART. 10. Two other sorts of judicatories, which are wont to be regarded as Judicatories of Exception, are those styled in English practice, Audit Courts, and those styled in the same practice, Courts of Claims.

What there is peculiar in them, as compared with other judicatories, and common to them, as compared with one another, is this, to wit, that in their organization there is a sort of imperfection: in each wanting a situation which is commonly regarded as a necessary and indispensable element in the composition of a judicatory. In the Audit Court, the situation wanting is that of pursuer: in the Court of Claims, the situation wanting is that of defendant. Not that in either case, the functions of the deficient situation remain constantly unperformed: in both cases, a functionary has place, by whom they ought to be, and at any rate are professed to be, with scrupulous exactness performed, and with more or less exactness commonly are performed, and that is the judge. Without a judge, the functions belonging to judicature cannot in the aggregate be performed at all: they cannot be either well performed or ill performed. But without a pursuer distinct from the judge, they are capable of being performed: and so without a defendant distinct from the judge.

Without a pursuer they are performed in the civil field in English practice in this same Audit Court: the business of it consists in calling a debtor to account, the question being in every case, whether a debt which it is admitted he has incurred, has been discharged by him: if the decision be in the affirmative,

he is pronounced discharged, and no adverse proceeding against him can be carried on; if the decision be in the negative, he may be proceeded against by a demand for satisfaction, as in the ordinary case of the proceeding on a demand on the score of debt.

In ordinary cases of debt, the suit being carried on in the ordinary judicatories, suits on this ground are carried on promiscuously, with suits on all other grounds: whereas, in this case, suits on this ground are the only sorts of suits of which the judicatory takes cognizance.

In English practice the only instance in which a judicatory under this name is established by Government, and acts with power from Government, is that in which the situation of creditor, and thence of judge, is occupied by Government itself, that of debtor being occupied by individuals: by individuals by whom money (money's worth might as well be added) has been received, either in requital for service rendered to Government by the receiver of the money; or, in trust to hand it over to some Government functionary, or to expend it on account of Government.

Examples of a Judicatory thus denominated, are—

1. The General Audit Board which sits in Somerset-house for the auditing of Government accounts in general.

2. The Judicatory of which the Auditor of Greenwich Hospital is the Judge. Debtors, and the only ones, on whose accounts judgment is there passed, are those who stand in that relation to the constituted authorities of that Government Hospital for superannuated Naval functionaries.

3. Chelsea Hospital—has this foundation an Auditor so called: this receptacle for the entertainment of superannuated Army functionaries!

Instances are not wanting in which, in the service of an individual, another individual is maintained for this purpose, and under this denomination. In these cases, the principal is a great landholder; the debtors, his tenants. What will be the sensation produced in the mind of a Frenchman, for example, when he is informed of an instance, in which for a Nobleman, a Duke, service in this shape and under this name, is performed by a Barrister, son of another Nobleman, a Lord,—and that for this service the Barrister receives £1,500 a-year: full twice as much as the highest paid species of Judge in France.

Upon the choice of the debtor, it depends in this case, whether to appear in this sort of judicatory or not: whether to pay the debt, or produce evidence by which payment is proved.

In suits called penal or criminal, under Rome-bred law, this kind of procedure is carried on, over a very extensive part of the logical field of judicature, in divers nations. Under the Austrian Government, in particular, it used so to be. Witness *Banniza*. So under the Prussian Government.

In Courts-Martial, in England, the function of pursuer is declaredly added to that of the Judge. Judge-Advocate is the denomination by which this functionary is distinguished. In the situation of pursuer, he acts singly: in the situation of Judge he acts as presiding member of a many-seated judicatory—a Board of Judges.

Ratiocinative.

Art. 11. For the designation of a *Judicatory*, why employ this term, to the exclusion of the more commonly employed word *Court*?

Answer. Reasons.

1. In this same signification the word *Judicatory* is already in use.

2. The word *Judicatory* is clear from all ambiguity: the word *Court*, not.

3. The word *Court*, besides ambiguity, is liable to produce delusion and mischievous error.

4. Not that the word *Judicatory* is altogether free from ambiguity; but the ambiguity is of a sort from which not so much as misconception, much less any evil effect in practice, can ensue. Originally it meant—not a person or persons, but a place in which the person or persons *acted*, as in the case of the words *Dormitory*, *Laboratory*, *Refectory*: that is to say, the *usual* place of residence of the functionary acting as such; and, in conformity to a customary figure of speech, from the *original* and proper signification, comes the *improper*—the derivative.

5. Tainted by this same ambiguity is the import of the word *Court*: and besides this innoxious feature of imperfection, so is it, by another, and that a noxious one.

6. In Monarchies in general, and in the English Monarchy in particular, in addition to the sense in which it is synonymous to the word *judicatory* in its *person-regarding* sense, as above, the word *Court* is employed in the designation of the persons following:

I. The Monarch.

II. The persons most immediately attached to the service of the monarch, in his *private* or say *non-functionary* capacity.

III. Any such other persons as are most frequently in his presence.

7. *Antecedent* to the *Juridical* sense of the word *Court*, was, as above, its *Monarchical* sense. In the times of original inexperience and simplicity, all the authorities in the state were, in the supreme grade, exercised by one hand. By degrees, the judicial authority—the Monarch not having time for the exercise of it—was transferred to *subordinate* hands. Name of this functionary—in England, the *Grand Justiciary*. But, his residence was the same as that of the Monarch: to wit, the *Court* in its *king-regarding sense*; and whenever and wherever the Monarch *travelled*, (as for a great part of his time he commonly did,) with him travelled the *Judge*, and what was called *Justice*.

8. A *Court* is the region of favour: of favour, in contradistinction to Justice. A Monarch is above Justice. From his will it is, as from its source, that what in a Monarchy is called *Justice*, emanates: on that same will depends the nature of it: the purport and tenor of the words by which, on each occasion, it stands expressed. Witness the maxim, *Quod Principi placuit legis habet vigorem:*—a maxim, in every pure Monarchy, not only acted upon, but avowed: in the English Monarchy, sometimes avowed, sometimes disavowed: but, by all, more or less acted upon, even when disavowed.

9. The Monarch, at any rate, is essentially and avowedly irresponsible; and, whosoever is irresponsible, has thereby power to do everything which in every one else is UNJUST, and, but for such irresponsibility, would be so in him likewise.

10. Employ the same word in giving denomination to a *Justice-Chamber* and a *Palace*—to a *Judge* and a *Monarch*—as well might you employ the same word in giving denomination to JUSTICE and *injustice:* or *non-guiltiness* and *guiltiness*—to *veracity* and *mendacity*—to *truth* and *falsehood*.

11. Of the word *Court*, the effect is to involve in a sort of *clouded majesty*, the person whom it is employed to designate. It thereby is suited to the purpose of being employed as an instrument of *pernicious deception*, as often as, by others or by himself, employed in the designation of the person of a Judge. On the imagination of *hearers* and *readers*, and in particular of *suitors*, it serves to stamp the idea of a person endowed not only with *recondite wisdom*, but with a *power* still superior to the legitimate power of a Judge.

12. In the mind of the functionary, by presenting to view a *fictitious*, in the room of the *real entity*, it obnubilates and weakens the sense of *responsibility:* while Ixion-like, the mind of the deluded multitude embraces the shadow, the substance escapes its grasp.*

SECTION II.

Actors on the Judicial Theatre.

Instructional. Expositive.

ART. 1. Actors on the Judicial Theatre,† or say, *Performers in the Judicial Drama*. Of these, some will be seen to be *Judiciary* functionaries; as to these, see Section 3: others, *not;* as to these, see the remainder of the present *article*. But note here—that to one and the same individual it may happen to be in two consecutive moments a *performer* in two different characters:—that of a non-functionary, and that of a functionary: as to this matter, see Section 3, *Judicial Functionaries*.

Instructional. Expositive.

ART. 2. On his first appearance in the Judicial theatre, in the presence of the Judge as such, addressing himself to the Judge, it is either of *his own* motion, or at the call of some one *else*, that a person, be he who he may, enters:—entering of his own motion, and for the purpose of being heard, by the Judge, *to whom* he makes *application* to be heard: this doing, he may, by a customary denomination, be styled an *Applicant*.

Instructional.

ART. 3. Purposes for which, to a Judge, as such, application is capable of being made, are two: 1, to render service to him in this or that shape; or 2, to demand service in this or that shape, at his hands.

Expositive.

ART. 4. When, by any person, application is made to a Judge, as such, it is made by him either on his own account or on account of some other person or persons, or on both accounts or on any joint account. In so far as it is on his own account, let his denomination be—*principal* Judiciary applicant: in so far as on account of any other person, *assistant* Judiciary applicant.

Instructional.

ART. 5. Of a service which it may be of use should be rendered by an individual to a Judge as such, the beneficial effect will be to make addition, in some shape or other, either to his appropriate power, or to his appropriate knowledge. To his appropriate *power*, service cannot need to be rendered, otherwise than in an *extraordinary* state of things: that is to say, when *resistance* thereto is either experienced or apprehended. For the cases in which, in consideration of such extraordinary states of things, power is given to call for service in this shape at the hands of individuals at large, see the next Section, Section 3, *Judiciary Functionaries*, Art. 22, and, if it be right that, for this purpose, appropriate service should be *rendered compulsorily*, not less so is it, that it should be *tendered*, *spontaneously*, or, in any other way, *voluntarily*. *Aid-tenderer* is the appellation by which, in this case, the applicant may, upon occasion, be designated.

Instructional. Expositive.

ART. 6. If it be in respect of his appropriate *knowledge*, that service is *tendered*, and thereupon *rendered*, to the Judge, it is, in the shape of *information:* by *information* given to him in relation to some matter of *fact*. *Informant** is the

* Throughout this code—for the opposite purpose of maximizing the strength of the sense of *responsibility*—the word *Judge* is, in so far as recollection serves, employed in preference to the word *Judicatory;* except where the word Judge might not be sufficiently comprehensive.

† [*Theatre.*] *Theatres* (be it remembered) there are *moveable* as well as *immoveable*.

* The word *Informer*, though in its original

appellation by which, in this case, the *applicant* may be, and accordingly is wont to be, designated. For the several *purposes*, for which such information may be tendered and received, see Procedure Code, Ch. viii. Judicial application.

Instructional. Expositive.

Art. 7. If, for *service*, in any shape, a demand is made at the hands of a judge as such, —it will be either at the charge of some determinate *party*, or not: if yes, it will have for its purpose the giving commencement to a *suit at law*, or say for shortness, *a suit:* * if not, it will be for some one or other of divers purposes, as to which see Section 22, *Judges' pre-interpretative function*, Section 24, *Judges' non-contestational-evidence-elicitative function:* and Procedure Code, Ch. viii.

Expositive.

Art. 8. By a party to a suit, understand a person, or set of persons jointly considered, in any number, whose station is on one and the same side of it.

Expositive.

Art. 9. *Sides* in a suit, two: the pursuer's and the defendant's. *Pursuer*, the party by whom, at the *charge* of another, a *demand* is made: *Defendant*, a party at whose charge a demand having been made, is by that same party *resisted*.

Expositive.

Art. 10. A suit is of two sorts: either a *completely constituted* suit, or an *incompletely* constituted suit: a completely *constituted suit is that*, in which, on the two sides, appear and act two individual parties as above: an incompletely *constituted suit, that*, in which, there being on one side, one such party,—there is not on the other side, any such party, —any person, other than the *Judge. Ordinary*, —that is to say to the *greatest extent exemplified*, is the case, in which the suit is *completely* constituted: *extraordinary*, that in which it is *incompletely* constituted.

Exemplificational.

Art. 11. Of the case in which it is of the *Pursuer* that the *place* is occupied, or say the *part* acted, by the Judge, examples these—

I. In a case styled *civil*, or say *non-penal*, in English practice, an *Audit* Court, or say a Court of Account, spoken of in the preceding Section: the part of *Defendant* is in this case acted by the individual—the *Accountant:* the part of Pursuer is, in conjunction with his own, acted by the Judge.

II. In a case styled *penal* or say *criminal*, —in Rome-bred practice, the sort of suit styled *inquisitional:* the part of *supposed* or say *suspected delinquent* being, in this case, acted by the Defendant,—the part of Pursuer is, in conjunction with his own, acted by the Judge: name that may be given in this case to the Pursuer, the *Inquisitor:* in Rome-bred Latin he is styled *Inquisitus*.

III. In some sort analogous to this is—in a Military Penal Judicatory, in English practice, the part acted by the functionary styled the *Judge-Advocate*.

Exemplificational.

Art. 12. Of the case, in which it is of the *Defendant* that the place is occupied, or say the part acted, by the Judge,—an example is —in English practice, the sort of judicatory styled a *Court of Claims*. On the ground of right, at the charge of Government, a benefit in some shape or other, is, in this case, demanded by a *party*. The part of *Demandant*, or say *Pursuer*, being thus acted by a party, —the part of *Defendant* is, in conjunction with his own, acted by the *Judge*.

Expositive.

Art. 13. For distinguishing the several modes of rendering assistance with reference to litiscontestation,—and thence the several corresponding species and denominations of judicial assistants,—*sources* of division, with correspondent *species* and *denominations*, are the following:—

I. Source the *first*. Relation as between the principal, (to wit, the party,) and the *assistant*. Species thence deduced—1. Party, the *intended benefitee:* 2. Assistant, the *trustee*. Included, in and by these denominations, is the supposition—that whatsoever *functions*, whether *rights* or *powers*, are exercised by the *assistant*, are of the nature of *trusts:* that is to say charged by law with the obligation of correspondent services: services, consisting in the rendering the exercise of them *beneficial*, or say *serviceable*, to the party: which party is thereby constituted *intended benefitee*. As to the several *species* of *trusts*, see *Civil Code*, title, *Trusts*. In the meantime, as to the *intended benefitee*, and the correspondent *trustees*, see, for the present, *Westminster Review*, for October 1826. No. xii.: and page 59 of the Article in its form of a separate Tract.*

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signification exactly equivalent to *informant*, has, by the *dyslogistic* import, which has become attached to it, been rendered, with reference to the purpose here in hand, unfit for use.

* An appellative, customarily employed, in the English language in particular, as synonymous to *a suit*, is *a cause;* but, such is the ambiguity resulting from the other import—the *logical*, or as some would say, the *metaphysical* import—given to this same word, that, throughout this *present* work, it has seemed advisable to abstain from giving any employment to it. *Suit* has for its *conjugates* (as logicians say) *to sue, to pursue, suitor, pursuer, pursuit: cause*, employed in this sense, has no such *conjugates*.

* Vol. vi. p. 387. A Commentary on Mr Humphrey's Real Property Code.

II. Source the *second*. The place where the Judge is—say the *Justice Chamber*—being the place in which the service is considered as rendered,—relative *time* of existence at that place as between party and assistant. Species: 1. Assistant *Concomitant*. 2. Assistant *Substitute* or say *Representative*.

III. Source the *third*. AUTHORITY, in virtue of which the assistant acts: that is to say, 1. The authority of the party assisted: 2. That of no other than the individual assisting. Species: 1. Assistant *Depute*. 2. Assistant *self-located*.

IV. Source the *fourth*. Relation, in respect of the *existence* or non-existence of *other* assistants or say *agents*, between the Principal and the Assistant in question. Species: 1. *Immediate* assistant—2. *Unimmediate* assistant.

V. Source the *fifth*. Nature of the *inducement*, operating as the *final* and efficient *cause*, of the *act*, by which fulfilment is given to the obligations belonging to the *trust*. Species: 1. *Gratuitous* assistant. 2. *Professional* or say *paid* assistant.

VI. Source the *sixth*. *Mode* in which the sort of service in question is rendered—to wit, 1. Preordinative. 2. Effective. Species: 1. Preordinative assistant: in English law language, *Attorney*, or say *Solicitor:* in French, *Avoué*. 2. Effective assistant: in English law language *Barrister:* in French, *Avocat*. Functions of the effective assistant resolvable into three: to wit, 1. the *orative:* exercised by making, instead of the party, *application* to the Judge: 2. the *evidence-elicitative:* 3. the *argumentative*.

VII. Source the *seventh*. *Time*, at which the *assistance* is afforded, (relation had to the commencement of the suit.) Species—1. the *contemporarily-serving*, as above; 2. the *preinterpretative:* in the former case, the suit is *in existence;* or, (as lawyers say,) in ESSE; in the latter, it is in a state of future contingency; or, (as lawyers say,) in *posse*. Denomination of the *preinterpretative* species of assistant, in English, a *Counsel*, that is to say a *Barrister;* so denominated, on the occasion of his rendering assistance in this shape: in French, *un conseil*, that is to say, *un avocat*, so denominated on this same occasion.

Instructional.

ART. 14. Note, that no such *assistant* as the Preinterpretative Assistant do the Judiciary Establishment of this Constitutional Code, or the correspondent Procedure Code, have need of, or give admission to. To the *preinterpreter without* authority, this Code substitutes the preinterpreter *with* authority: to the party's professional preinterpretative assistant, the *preinterpreting* Judge. See as to this, Section 22, *Judges' preinterpretative function*.

For the different arrangements which *require* to be deduced from and grounded on, and accordingly *will* be deduced from, and grounded on, these several distinctions, see PROCEDURE CODE, Ch. viii. and Ch. ix.

Expositive.

ART. 15. By an *intermediate assistant*, understand—any *assistant*, who, on the occasion in question, *intervenes* between a party and the Judge: and who, accordingly, is thereby, and in so far, a *substitute*, or say *representative* of the party.

Instructional. Exemplificational.

ART. 16. Between the Principal and the Judge, Judicial Assistants to either party, in number indefinite, before or behind one another, in the manner of the *links* in a *chain*, may have place. Of *chains* of this sort, examples are the following:—

1. *Chain the first*. Party, a person incapacitated from acting for himself, by relative *infirmity of mind:* by whatsoever cause produced—immaturity, caducity, or fatuity. Necessarily intervening *Judicial* assistant, and, as such, *trustee*, in this case, *one:* that is to say, the *Guardian*. By the assistant, as occasion requires, appearance is made in the presence of the judge.

2. As and for his assistant, concomitant or substitutional, this permanent trustee employs (suppose) for the ordering, or say management, or conduct, of the suit,—an occasional assistant, gratuitous or professional: by whom, as the occasion requires, appearance is made (as above) in the presence of the judge. Number of links in the chain of *trusteeship*, in this case, *two*.

3. Of the *Guardian*, as above, the residence being in the dominion of a distant foreign state, or in a distant dependency of the state in question,—for judicial assistance he betakes himself to a *professional assistant* on the spot. But, this professional assistant is, by this same distance, incapacitated from paying, in his own person, attendance on the judicatory in question. Under the like necessity, he accordingly employs on this occasion, as his *agent*, another professional judicial Assistant; by whom, his residence being on the spot, the attendance, as above, is paid. *Links*, in the chain, in this case, *three*.

Expositive.

ART. 17. Assistant of the first order—Assistant of the second order—Assistant of the third order. By these several appellatives may the three sorts of intermediate Assistants be distinguished. But from which of the two subject-matters of reference, shall the numeration take its commencement? Say, from the *Party:* he being the person, to whom the assistance is administered. Immediate Assistant and Trustee to the party or parties, in this last case, the *Guardian:* Intermediate Assistants and Trustees, the two professional men, as above.

Exemplificational.

ART. 18. *Chain the second*. Party, a Joint-Stock Company. Members too numerous to act as suitors, without confusion. Immediate Ju-

the individual case: of which circumstances, under the Procedure Code connected with this Code, the Judge will provisionally form his conception from the *examination* taken by him of the *applicant*. In the case of a *child*, of an age inferior to the age of reason, or in that of a person in a state of complete *fatuity*, *no*: the party being, in these cases, by the supposition, in a state of complete incapacity, as to the watching over his own interest. But in these cases, as in every case, the difference between capacity and incapacity depends upon *degrees*: and (delay, expense, and vexation apart) it belongs to the Judge to obtain, as and for the *ground* of his judgment as to the *degree*, the best evidence which the nature of the case affords: in which evidence, cannot but be included the testimony of his own senses.

On the other hand, the system of Judicial Procedure having, in every country, been the work of men, who, either at the time of workmanship, were in the exercise of the function of professional judicial assistant in one of its modes as above, or for the whole time during which they were qualifying themselves for the task, had in that way been *engaged*: and in virtue of that profession, their interest being in a state of constant opposition to the interest of the parties on both sides of the suit, and more especially of those whose side was on each occasion the *right* side,—hence it is—that in the *Procedure Code* of every such country, it has been an object of uniform endeavour to reduce to its minimum the number of the occasions on which the parties on both sides, or on either, are compelled or admitted to appear in *open* judicatory in the presence of the *Judge*.

Hence it is that, in addition to the *incidentally necessary* number of professional *actors* in the judicial drama, the constantly *unnecessary*, yet constantly admitted number has, to such a degree, been worked up, as above.

Only in the case, where the evil, correspondent and opposite to the collateral ends of justice, as above, would *otherwise* be preponderant over the evil correspondent and opposite to the *direct* ends of justice,—can evidence, elicited in the epistolary mode, be admitted, to the *exclusion* of evidence from the same source, elicited in the *oral* mode; elicited—that is to say, in so far as the judge has it, in any way, in his power to compel *attendance* at the judgment seat, for the elicitation of such oral evidence; and, even in this case, the effect of epistolary evidence need not be *conclusive*: it may be subjected to the being eventually reversed, or modified, by elicitation subsequently performed in the *oral* mode.

So likewise, in the case where the proposed evidence holder,—being or not being, at the time, to this purpose in a state of actual subjection to the power of the judge,—has, at that same time, his residence in a *distant* dependency of the state, or on a spot within the dominion of this or that *foreign* state.

Section III.

Judiciary Functionaries.

Enactive. Expositive.

Art. 1. Judiciary functionaries, to the *directing* portion of whom application is made, by applicants and their assistants, as per Section 2. *Actors, &c.*, and of whom is composed what remains of the company of performers in the judicial drama, are these—

I. In an Immediate Judicatory.

i. Magisterial.

1. The *Judge*; with his Deputes Permanent, as to whom see Ch. xiv.; and Occasional, as to whom see Ch. xv.

2. The *Registrar*; as to whom see Ch. xxi., and below, Art. 4.

3. The *Government advocate*; as to whom see Ch. xviii. and Ch. xix.; and below, Art. 5.

4. The *Eleemosynary advocate*; as to whom see Ch. xx., and below, Art. 6.

5. The *Quasi-jurors*; constituting collectively the Quasi-jury: as to whom see Ch. xvi., and below, Art. 7.

ii. Ministerial.

6. Judiciary messengers, or say, *Mandate-bearers*; as to whom see Ch. xxvii., and below, Art. 8.

7. *Prehensors*; as to whom see Ch. xxviii., and below, Art. 9.

8. *Door-keepers*; as to whom see below, Art. 11.

9. *Guards* (Judiciary Guards); as to whom see below, Art. 12.

10. *Jailors*, or say *Prison-keepers*, or *Incarcerators*; as to whom see below, Art. 13.

11. *Quasi-lictors*; as to whom see below, Art. 14.

12. *Vendue-masters*, or say Venditors, or Judicial Salesmen; as to whom see below, Art. 15.

13. *Executionalists*;* as to whom see below, Art. 16.

II. In an Appellate Judicatory. Executionalists excepted, functionaries, as far as needful, with functions the same in nature and denomination, as above. As to these see Ch. xxii. But for execution, the business is by the *Appellate*, remitted to the *Immediate* Judicatory. See below, Art. 17.

III. The Justice Minister; as to whom see Ch. xxiv., and below, Art. 18.

IV. Added to these,—as well in an Appellate as in an Immediate judicatory,—officiating

* [*Executionalists.*] Executioner would have been the more simple, and thence the more convenient appellative. But for this purpose it has been spoiled: namely, by being confined to the designation of persons employed in the infliction of mortal punishment; or, in its most extended sense, persons employed in the infliction of dolorific corporal punishments.

in the character of a Committee of the *Public-Opinion Tribunal*, are a body of Assessors styled *Judicial Inspectors;* as to whom see Ch. xvii., and below, Art. 19.

V. In every portion of territory styled a Bis-subdistrict.

1. The *Local Headman;* as to whom see Ch. xxv., and below, Art. 20.

2. The *Local Headman's Registrar*, or say, for shortness, the *Local Registrar;* as to whom see Ch. xxvi., and below, Art. 21.

I. MAGISTERIAL JUDICIARY FUNCTIONARIES.

Enactive. Expositive.

ART. 2. By a *Judge*, understand a functionary, to whose principal and characteristic functions, exercise is given, by his giving, by means of appropriate *decrees*—opinative and imperative—and the *mandates* thereto conducive, execution and effect to ordinances of the Legislature; that is to say, in all cases, those excepted, in which the obligation of producing that effect belongs to functionaries in the Legislative and Administrative departments in their several and respective fields of service.

Expositive. Instructional.

ART. 3. Note, that in the case where *really existing* law, called *statute* or written law, is the object, or say subject matter of reference, the ordinance in question is a really existing ordinance; inasmuch as the *terms* of it did originate with, and were fixed by, the Legislature: whereas in a case, in which the object or subject matter of reference is that which is universally called *Unwritten Law*, and by English lawyers *Common Law*, (in one of the several senses in which that appellative is employed)—there not being any such really existing object, or say subject matter of reference, applicable to the case,—an imaginary portion of falsely supposed existing law—say a supposed *virtual ordinance*—must, on the occasion of each demand made by a suitor, be imagined for the purpose: imagined—in the first instance—either by the judge himself, as where, without application made to him by any person, he begins to act as under some systems of procedure has been the practice;* or, by an applicant—by a Pursuer for example; or, by or for some other party in the suit; and thereupon either that same fictitious ordinance has been adopted and acted upon by the judge, or some other has been feigned by him, and acted upon, as aforesaid.

Enactive. Expositive.

ART. 4. By the *Registrar* of a judicatory, understand a functionary, to whose functions exercise is given, by his committing, or causing to be committed, to writing, such discourses (they being relevant and material to the purpose) as are uttered, in the judicatory, by or in consequence of an *application* therein, by any person, made by word of mouth; as also by his securing and keeping for public use, every written or other *instrument*, or say *document* therein delivered, for the purpose of its serving in the character of *evidence:* as also by his committing, or causing to be committed, to writing, statements expressive of whatever relevant and material acts, positive or negative, of a nature to influence the termination given to such application, as happen to have been, by any person, performed: including, upon occasion, any external signs, from which the inward state of mind of the person in question appears to have received expression: such as—tone of voice, change of colour, configuration of the lineaments of the face, gesture and deportment.

Enactive. Expositive.

ART. 5. By a *Government Advocate*, understand a functionary, to whose functions exercise is given, by his acting as the Substitute, or say Representative of the Government to the purpose in question, on the occasion of a suit, in which the Government is a party, whether it be on the *Pursuer's* or on the *Defendant's* side: or any other judicial case in which the Government is concerned in point of interest.

Expositive.

ART. 6. By an *Eleemosynary Advocate*, understand a functionary, to whose functions exercise is given, by his acting as *Assistant*, concomitant or substitute, or say *Representative* to any individual, in so far as such individual, being, or being about to be, or having, or being about to have need to be, a party in a suit, is in a state of relative *helplessness:* being, to a greater or less degree, by infirmity, bodily or mental, incapacitated from acting by himself with adequate effect; and being, at the same time, unable to procure gratuitously for the purpose in question, adequate assistance; and also, by relative indigence, incapacitated from obtaining adequate assistance, as above, together with such evidence favourable to his side as the nature of the individual suit happens to afford. For other arrangements made for the relief of such relative helplessness, see Section 13, *Justice for the Helpless.*

Enactive. Expositive. Ratiocinative.

ART. 7. By *Quasi-jurors*, collectively termed a *Quasi-jury*, understand an ever changing body of Assessors, convened from the body of the people at large, for the purpose of its serving, by the exercise given to its function, as a *check* applied to the power of the *permanent* judges: which same power, were it not for

* In this case, in and by existing codes, the judge has been spoken of as acting *ex officio*, or *ex mero motu;* and, in penal cases, the course, or say the system of procedure, taken in its totality, has been styled the *inquisitorial*, in contradistinction to the *accusatorial*.

this and other checks, as per Section 32, *Securities for appropriate aptitude*, would be altogether arbitrary; enabling its possessors respectively on each occasion to promote their own particular and sinister interests, at the expense of the interest of the community at large, in respect of justice.

By its *name*, this same judicial body styled a *Quasi-jury*, bears reference to the judicial body styled in English-bred law, a *jury:* of which, without possessing the vicious features, it is designed to exercise the beneficial influence.

For the arrangements, relative to this same class of functionaries, see Ch. xvi. QUASI-JURY.

II. MINISTERIAL JUDICIARY FUNCTIONARIES.

Expositive.

ART. 8. By a *Judiciary Messenger*, or say *Mandate-bearer*, understand a functionary, to whose functions exercise is given, by bearing mandates (for whatsoever purpose and of whatsoever tenor) to, as also responses from, persons resident, at the time in question, in any place other than the Justice Chamber. As to Judiciary Messengers, see Ch. xxvii.

Expositive.

ART. 9. By a *Judiciary Prehensor*, or say for shortness a *Prehensor*, understand a functionary, to whose functions exercise is given, by application made of physical force, in so far as needful, to the physical possession of any subject matter, of which it is requisite that such possession, indefeasible or defeasible, should be taken, for the purpose of giving execution and effect to a mandate of a judge. Such subject matter may be either a *thing* or a *person:* if a *thing*, either a thing immoveable, or a thing moveable. For the several purposes of such prehension ulterior thereto, see *Procedure Code*, Ch. xxii. PREHENSION.

Instructional. Expositive.

ART. 10. Every person who is fit for acting as a *Prehensor*, is fit for acting as a *Mandate-bearer:* but, of persons fit for acting as Mandate-bearers, it is not every one that is fit for acting as a Prehensor. The two functions may come accordingly to be allotted to the same person, or to different persons, as occasion may require.

Expositive.

ART. 11. By a *Door-keeper*, or say a *Janitor*, understand a functionary, to whose functions exercise is given, by giving (subject to direction from the judge) *entrance* into, or *exit* from, the Justice Chamber, to the several other actors on the judicial theatre; and, so long as they are therein, causing them to occupy their respectively appropriate local situations.

Expositive.

ART. 12. By a *Judiciary Guard*, or say for shortness a *Guard*, understand a functionary, to whose functions exercise is given, by occasional application made, of physical force, to the purpose of preserving from injury, while in the Justice Chamber as above, (or thither repairing, or thence departing,) persons and things: and elsewhere than in the judicatory, giving execution and effect to judicial mandates, in which the force of a *Prehensor* fails of being sufficient.

Expositive.

ART. 13. By a *Jailor*, or say *Prison-keeper*, or *Incarcerator*, understand a functionary, to whose functions exercise is given, by his keeping under confinement within a space enclosed within walls, the bodies of all persons, who by mandate from a judge, or any other person authorized by law so to do, have for this purpose been committed to his charge.

Expositive.

ART. 14. By a *Quasi-Lictor** understand a functionary, to whose functions exercise is given, by his inflicting or causing to be inflicted, afflictive corporal punishment: for example by stripes, or temporary confinement of the body, or some part or parts thereof, in a state of uneasiness; as also loss of life, should punishment to this effect be in any case ordained in and by the Penal Code.

Expositive.

ART. 15. By a *Vendue-Master*,† or say a *Venditor*, understand a functionary, to whose functions exercise is given, by his causing subject matters of property, moveable or immoveable to be sold for the purpose of operating, by the acquisition of them, in the character of a satisfactive, or, by the loss of them, in the character of a punitive, remedy.

Expositive.

ART. 16. By the generic name *Executionalists*, may be designated, 1. Jailors, 2. Prehensors, 3. Quasi-Lictors, 4. Vendue-Masters.

Enactive. Expositive.

ART. 17. By an *Appellate* Judge, understand a Judge, to whose functions exercise is given, by cognizance taken by him of a suit, at any time after the first day on which it has been submitted to the cognizance of an Immediate Judge: most commonly in consequence of a petition by a party for a decree, by which, if issued and carried into effect, the condition of the parties, or some of them, will be rendered more or less different from that which it would be, if execution and effect were given to the

* [*Quasi-Lictor.*] Under the law of ancient Rome, *Lictor* was the denomination by which a functionary exercising functions of this sort, was designated.

† [*Vendue-Master.*] In the English West India Colonies, functionaries thus employed, are designated by this denomination.

decree from which the appeal is made: that is to say, a decree issued by the Immediate Judge. As to what belongs to Judges Appellate, see Ch. xxii. APPELLATE JUDICATORIES.

Enactive. Expositive.

ART. 18. By the *Justice Minister*, understand a functionary, to whose functions exercise is given, principally by the exercise of the several powers of location, dislocation, and suspension, in relation to the several Judges Immediate and Appellate. As to what belongs to the Justice Minister, see Ch. xxiv.

Enactive. Expositive.

ART. 19. By a *Judicial Inspector*, understand a functionary, to whose functions exercise is given, principally by his presence, at the place and time, at which exercise is given to the functions of a Judge, Immediate or Appellate: he, by such his presence applying a check to the power, which, were it not for this and other checks, would be arbitrary in the hands of the said judges: this same inspective function being exercisable, without any act done by the person in question, expressly for this purpose,—his presence there and then, having place for some other purpose. As to what belongs to a Judicial Inspector, see Ch. xvii. JUDICIAL INSPECTORS.

Enactive. Expositive. Instructional.

ART. 20. By a *Local Headman*, understand a functionary, who, in each one of the smallest portions of territory styled *Bis-Subdistricts*, or *Tris-Subdistricts*, into which, by an all-embracing process of division and subdivision, the territory of the State is divided,—is, of all public functionaries, whose authority is confined within the limits of that same portion of territory, the *head*. Of the functions allotted to this functionary, some will be seen to belong to the *Administrative*, the rest to the *Judiciary* Department. Of those which belong to the Judiciary, the exercise will throughout be in subordination to the authority of the Immediate Judge of the Subdistrict within which the Bis-Subdistrict or Tris-Subdistrict in question is contained. As to the species of functionary thus denominated, see Ch. xxv. LOCAL HEADMEN.

Enactive. Expositive.

ART. 21. By a *Local Headman's Registrar*, or say a *Local Registrar*, understand a functionary, by whom, in each Bis-Subdistrict, are exercised, with relation to the proceedings of the Local Headmen, functions the same as those, which by an Immediate Judiciary Registrar are exercised, as per Ch. xxi., with relation to the proceedings of an Immediate Judge; as also divers other functions by which, in so many corresponding forms, written evidence, chiefly of the *pre-appointed* kind, applicable to various purposes, receives its expression, and is preserved for eventual use. As to pre-appointed evidence, see the *Procedure Code*, and the *Rationale of Evidence*. As to the species of functionary thus denominated, see Ch. xxvi. LOCAL REGISTRARS.

Enactive. Expositive.

ART. 22. In case of need, for giving effect to the mandate of a judge, all persons, on requisition from him emaning, are bound to act as MINISTERIAL JUDICIARY FUNCTIONARIES *occasional*, in any of the above several capacities: all persons, and in particular all *Preventive service* functionaries, all *Army* functionaries, and all *Navy* functionaries. As to this, see Section 11, *Judges' Sedative function;* and Section 12, *Judges' Aid-compelling function.*

Enactive. Expositive.

ART. 23. So likewise, of their own motion and without waiting for any such mandate as per Art. 22, persons are, in certain cases, permitted, and in certain cases even bound, to act in those several capacities, or some of them, for the purpose of giving execution and effect to the law: to wit, on the presumption, that, had the occasion come to the knowledge of the judge,—a mandate, to the effect in question, would, by him, have been issued. For a specification of these cases, together with the reasons for the institution of this power in the several cases, see the Penal, Non-penal, and Procedure Codes: and see below, Section 11, *Judges' Sedative function*, and Section 12, *Judges' Aid-compelling function.*

Instructional. Expositive.

ART. 24. Note that, in and by the Procedure Code, in connexion with this Code, the arrangements, for the application of the necessary checks to abuse of power in these cases, being purged of factitious delay, vexation, and expense,—proportioned to the efficiency of the security thus afforded, is the *amplitude* of the *power*, which, without preponderant danger, may be created and conferred.

In contradistinction to these *occasional*, the foregoing may be styled *permanent* Judiciary functionaries.

Instructional.

ART. 25. Note, that, to an extent more or less considerable,—with great advantage, in respect of frugality as well as certainty of intended effect, may be united the functions of *Judiciary Mandate-bearer* and *Letter-post bearer:* among the functionaries subordinate to the *Interior Communication Minister*, those acting in the capacity of *Letter-post bearers*, being, for this purpose, and to the extent thereof, rendered subject to the direction of the judge.*

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* 1. Adequate (it is believed) to the purpose of giving, in the most effectual manner, and with least delay, vexation, and expense, execution and effect, to the aggregate of the mandates, issued by the aggregate body of the judges, is the aggregate of the functions, in and by this code, allotted to the

SECTION IV.

Judicatories—their grades.

Enactive.

ART. 1. In every *Subdistrict* is an *Immediate* Judicatory, with a correspondent establishment of functionaries, Magisterial and Ministerial, as per Section 3.

Enactive.

ART. 2. In every *District* is an *Appellate* Judicatory; with its correspondent establishment, as per Art. 1.

Enactive.

ART. 3. The Immediate Judicatories, and they alone, have cognizance of suits in the first instance. The Appellate, and they alone, have cognizance of such suits and such suits alone, as, by Appeal or *Quasi-Appeal* from a party, on one or other side, come before them from the Immediate Judicatories.

Expositive.

ART. 4. By *Quasi-Appeal*, understand an application, which, without the name, has the *effect* of *Appeal*. See Ch. xxii. APPELLATE JUDICATORIES; and *Procedure Code*, Ch. xxviii. APPEAL and QUASI-APPEAL.

Enactive.

ART. 5. Subordinate in some sort to the Justice Minister, are as well the Appellate as the Immediate Judicatories. For what concerns this functionary, see Ch. xxiv. JUSTICE MINISTER.

Ratiocinative.

ART. 6. *Question* 1. Why, in any case, employ as *many* as *two* grades of Judicatories?

Answer. Reasons:—

I. General reason, this. For the more effectually securing, on the part of the functionaries in question, appropriate aptitude in all its branches.

II. Particular reasons, applying to these several branches respectively, these—

I. Applying to *moral* aptitude, this:—namely, exemption from *corruption* and *undue favour*.

1. Independently of all *qualifications* and *other securities*, applying to the situation of the Judge appealed to, whatsoever be the sinister design in question, that it should be pursued by *two* is, at the least, twice as improbable as that it should be pursued by *one*: especially two, in regard to whom effectual measures are taken to prevent their having had any personal communication, one with another. As to this, see Section 17, *Migration*.

2. Even supposing, on the part of the judge below, no matter from what cause, a desire ever so strong to show undue favour to a party on either side, and thus to produce the effect of a decision varying in any manner or degree from that which the justice of the case requires,—still, unless the judge below regards himself assured of a determination on the part of the judge above, to give effect to this desire, no adequate inducement will he have for the commission of the supposed injustice: the more flagrant the injustice, the stronger his assurance of undergoing legal punishment at the hands of the constituted authorities, his superordinates, or loss of reputation at the hands of the Public-Opinion Tribunal—one or both: and this without reaping the undue benefit he had proposed to himself.

3. True it is, that the assurance of the non-success of the supposed criminal designs, depends on the ability of the party in question to avail himself of the remedy held out by the power of the Appellate Judicatory: for wheresoever, by relative indigence, or any other obstacle, (which, without preponderant evil, it is in the power of the government to remove,) a man is rendered unable to avail himself of the relief thus proffered to him by law, the proffer thus made to him is a cruel mockery; and hence the need of a system of *Procedure*, in which expense, delay, and vexation, are minimized; as also of arrangements for administering, at the expense of government, *aid*, as far as needed, in the shape of professional assistance, and money or money's worth, for the expense necessary to the exhibition of evidence; as to which, see Section 13, *Justice for the Helpless;* and Ch. xx. ELEEMOSYNARY ADVOCATES; and Ch. xvii. JUDICIAL INSPECTORS. Remains, however, at any rate, the check, applied to the Judge's supposed improbity, by the fear of punishment and censure as above: finally, see Section 32, *Judges', &c., Securities for appropriate aptitude.*

II. Applying to *intellectual* aptitude, (knowledge and judgment included,) this:—namely, the benefit of *experience*.

At the commencement of his career, the Judge Immediate will be an *untried* man: *untried*,—that is to say, in his situation of Judge

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aggregate of the other functionaries belonging to the judicial department: adequate, or at any rate not wanting much of being so, in respect not only of *comprehensiveness*, but also of *clearness* and *simplicity*; clearness, to the exclusion of *obscurity* and *ambiguity*; *simplicity*, or say *non-complexity* or *non-complicatedness*, for the sake of *clearness* and avoidance of needless delay, vexation, and expense.

2. In respect of those several desirable properties, in a greater or less degree, will (it is believed) be found to fall short of them, the aggregate of the arrangements, in every as yet established *Pannomion*, in whatsoever nation established.

3. Look now to matchless Constitution; there, instead of adequacy,—instead of a stock "without overflowing full,"—behold a mixture of deficiency and redundancy: deficiency, to a considerable amount; redundancy to an absolutely unmeasurable amount. Of judiciary functionaries, (the judge in the instance of many of them, being disguised under so many different names,) for a list, though not yet a complete one, see PETITION FOR JUSTICE, (vol. v. p. 437 *et seq.*)

principal; though, by the necessity of his having previously served in the situation of Judge *Depute permanent*, as per Ch. xiv., or that of Judge *Depute occasional*, as per Ch. xv., provision for his being endowed with this same desirable quality has been made. Here, then, is *one* course of trial: and, the case being such, that, in the situation of Judge Appellate, no person can have place without his having, for a considerable length of time, served in the situation of Judge Immediate principal, accordingly, so it is, that to that one course of trial is added a second.

III. Thirdly and lastly, applying to appropriate *active* aptitude:—like security for, and probability of, increase of this branch of appropriate aptitude.

IV. Of all these causes of increase of aptitude, the existence and the influence being open to all eyes,—hence the probability not only of actual increase of aptitude, but, on the part of the people, a general *persuasion* of its existence; and, consequently, a correspondent confidence in the whole of the judicial establishment, coupled with a sense of security in their own breasts.

Ratiocinative.

ART. 7. *Question* 2. Why not *more* than two?

Answer. Reasons:—

1. Because of the vast increase of expense, delay, and vexation, without any adequate degree of probability of appropriate aptitude on the part of the ultimate decision; and correspondent confidence on the part of the people.

2. To come to particulars. Suppose, instead of *two* such grades, *three*. From the Immediate Judge, appeal to a Judge Appellate; from the Judge *Appellate*, appeal—say to a Judge *Super-Appellate*. Suppose now the decision of the Immediate Judge confirmed by the Judge Appellate, then reversed by the Judge Super-Appellate. Here then are in favour of the decision two *voices*—say accordingly two *chances;* in disfavour of it but one; the consequent result is, it is reversed. Of the Super-Appellate Judge the appropriate aptitude in all its several branches, has more chances in its favour, than that of either of his two subordinates. True: but has it more than both of them put together? for if, in respect of length of triedness, he has the advantage over both his subordinates, still has his immediate subordinate, the Judge Appellate, no inconsiderable stock of that desirable quality: and thus, from the vast addition made to the expense, delay, and vexation by this addition of a third grade to the machinery, no other addition would be made to the probability of rectitude of decision, than that which would be made by the difference between the lesser degree of appropriate aptitude on the part of the Judge Appellate, and the supposed greater degree on the part of the Judge Super-Appellate: for, in this case, by undue partiality on the part of the Judge Super-Appellate, injustice may be done no less easily and effectually, than by the like partiality on the part of the Judge Appellate in the former case. At all events, what adequate assignable grounds can there be in this case, for confidence in the justice of the decree pronounced by the Judge Super-Appellate?

But, (as per Ch. xxii. APPELLATE JUDICATORIES,) of several modes of change—all of them equally capable of having place—simple reversal is but one: let in the several others, and see what endless confusion, with addition to expense, vexation and delay, at each grade, would be the consequence.

Suppose, then, grades of jurisdiction, one above another, to the number of six or seven. Think of the confusion and denial of justice which in such a case cannot but have place! Think of the contempt of the ends of justice, which in that same case cannot but have place in the minds of the constituted authorities, by whom that same state of things is kept on foot!*

Ratiocinative.

ART. 8. *Question* 3. Why thus in *every* sort of suit?

Answer. Reasons:—

Because, if, in the case of any sort of suit, such repeated *trial* and opportunity of investigation as above, affords the sort of security in question, so, in that same degree does it in the case of every other sort of suit: between no two sorts of suits does the nature of things admit of the drawing to this purpose any determinate line of separation.

Instructional.

ART. 9. If there were any sort of suit in which, to the right of appeal, no condition or restriction whatever were applied, a denial of justice would in so far have place, to the prejudice of every person by whom the expense, delay, and vexation, inseparable from the application of this remedy, cannot be endured.

Hence, on the part of the Legislature, the necessity of using all necessary and practicable endeavours—

1. To minimize in every case the expense, delay, and vexation attendant on appeal.

2. So to order matters, that when he, who is desirous of appealing, is unable to endure

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* In the latter part of October, or the former part of November, 1825, such is the state of things that must be believed to have had place in the Judiciary Establishment of Scotland, if credit be given to certain letters on the subject in the *Globe and Traveller*, and the *Morning Chronicle* of that time. [There may still [1841] be four successive grades of appeal in Scotland. Beginning with the Sheriff-substitute, a case may be carried before the Sheriff, thence to the Outer-House of the Court of Session, thence to the Inner-House, and lastly to the House of Lords.—*Ed.*]

that burthen, the necessary aid shall be afforded to him from some other source or sources: —as, for example, from the purse—either of some *voluntary* contributor or contributors, should any such come forward; or, if the judge think fit, from the purse of the adverse party: (notwithstanding that of him it cannot as yet be known, whether he be in the right or in the wrong); or lastly, from that of the public, as a dernier resort.*

3. And that in the long run, from no ungrounded appeal, shall profit, in any shape, be made by the appellant.

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* Note, that under the system of *procedure* which the hereby-instituted Judiciary establishment all along bears reference to, and supposes to be in existence, in no case has the Judge *above*, for the basis of his decision any mass of evidence other than that which has been present to the cognizance of the Judge *below*. This supposed, for no expense can there, in the Judicatory above, be any demand other than the expense of obtaining professional argumentation on the ground of that same evidence. For the eventual defraying of that expense, the finding adequate security, should such be the mandate of the Judge below, may, under that same system of procedure, be a condition to the allowance given to the act of making appeal; in that case the Judge above will not take cognizance of any appeal, in the case of which the appropriate written instrument does not contain a word or words of permission, signed by the Judge below.

Throughout the whole tenor of this code, and thence throughout this section in particular, a power, the existence of which is supposed to have place on the part of the Judge, is, on every occasion, in so far as in his eyes the information in question is necessary to justice,—the power of making inquiry into the pecuniary circumstances of every individual, who, in any character whatsoever comes before him; for, suppose no such power to have place, denial of justice, coupled with and aggravated by, exercise of oppression may, instead of administration of justice, be the result.

In point of fact, should the case be such that, in no judicatory as yet having existence under any government, any such power has place,—on this supposition, so it is that in no judicatory as yet in existence, is fulfilment given to the ends of justice. True it is, that to an amount more or less considerable, evil will be among the number of the results of such inquiry: but, by this undeniable fact, no reasonable objection to the institution of such inquiry will be opposed; for not less true is it, that from beginning to end the whole business of judicature is but a choice of evils.

But injustice, depredation, and oppression, to any amount, under colour of justice, may, under any government be accounted for, and shown to be natural, by one notorious fact: namely, that, under every government as yet in existence, the system of procedure has been the product of the labour of a set of men, whose interest it has been,—that for their benefit, injustice, depredation, and oppression, in so far as beneficial to that same sinister interest, should be maximized.

But a question that may be asked is—the judge below, in a case in which it is his intention to do injustice, (and this is a case which must throughout be provided for,) will he thus lend his hand to the frustration of that which by supposition is his own purpose? Should not the act of making appeal have, without more ado, the effect of stopping the execution of the decree of the judge below? —leaving it to the judge above, to impose on the party appealing, the conditional obligation abovementioned? Questions these,—for the consideration of the legislature; but to which no determinate answer can be given, till the very tenor of the Code of *Procedure*, and of the corresponding part of the *Substantive Code*, has been determined.

Against this evil, in Section 18, *Incidental Complaint Book*, will be seen a provision which, even of itself holds out a promise of being—not merely an efficient, but even a sufficient, remedy: it consists in the conveying, on every occasion, to the judge *above*, information of everything which, on that same occasion, has been either done or said, by the judge *below:* thence it is, that by the subordinate judge no criminal act, positive or negative, can be committed, but information thereof will find its way to the cognizance of such his superordinate.

In the Procedure Code, in certain suits of a penal nature, the question may come to be started, discussed, and settled,—whether, for the avoidance of preponderant evil in the shape of expense, vexation, and delay, it may not upon the whole be advisable to inhibit the exercise of the right of appeal. The question belongs not to this place; only to obviate the imputation of want of due consideration, is mention here made of it.

Section V.

Number in a Judicatory.

Enactive.

Art. 1. Exceptions excepted, in no Judicatory number of seats more than one. As in an Immediate Judicatory, so in an Appellate.

Ratiocinative. Instructional.

Art. 2. For reasons, see those which apply to the case of a situation in the Administrative Department, (Ch. ix. Section 3.) To the present case, they will all of them be found applying: and, if with any difference, with increased force.

Ratiocinative.

Art. 3. To the reasons which apply to that case, add in this case, the additional control applied and information afforded, by means of the constant contestational discussion, with the assistance of Advocates, at the pleasure of the parties specially interested,—and Appeal with like discussion and assistance, also at the pleasure of those same parties.

Expositive.

Art. 4. Exceptions are—

1. Of necessity, for extraordinary occasions, the Supreme Judicatory, the Legislature. See Ch. vi. Sections 27, 28.

2. For ordinary occasions, the Quasi-Jury, as to all the elementary judicial functions but the imperative. See Ch. xvi. Section 3.

3. For military suits. See Ch. x. Section 13.

Instructional.

ART. 5. From any addition to number one in a Judicatory, the only beneficial effect which can be expected with relation to the ends of judicature, are those of a check to misconduct, and in particular to misconduct in those shapes in which it is the result of deficiency in respect of appropriate moral aptitude on the part of the Judge, first constituted; but against any such deficiency, other and ample securities are provided in abundance. See Section 32.

Ratiocinative.

ART. 6. As to this check, weak and inefficient will it be seen to be. By opposition to his colleague—the Judge whose location is the result of the first choice, by opposition to the will of this his superior, the inferior might lose the whole comfort of the official part of his life: by acquiescence no less does he suffer in any shape. No greater thought than what to him appears necessary to save himself from positive censure at the hands of Superordinates, and from being regarded by them as a cypher, will be the part taken by him, in the business.

Ratiocinative.

ART. 7. From the efficiency of the check thus applied to misconduct through moral inaptitude on the part of the first chosen Judge, as also from the value of any addition capable of being made to his appropriate intellectual aptitude, a cause of defalcation may be seen by that produced in the defalcation made from his *own* intellectual and active aptitude, by the torpor produced for want of adequate motives for exertion as above.

Ratiocinative.

ART. 8. In this way it is that when two Judges are placed in the same Judicatory with the same powers, appropriate aptitude in its several branches, in respect of each, is diminished by the coexistence of the other.

Ratiocinative.

ART. 9. By the allotment of a number greater than needful in each Judicatory, or in a considerable number of Judicatories, the ends of justice will be contravened in another way, through the medium of the expense: to wit, by producing, to the injury of a greater or less proportion of the members of the community, the effect of a denial of justice, and to a yet greater proportion that of increase of delay, vexation, and expense. For denial of justice is the effect, in so far as, by the length of journeys to and from the Judicatory, with the addition of the intervening demurrage, expense to an amount greater than can be defrayed, is imposed upon suitors or necessary witnesses: and the greater the length of those same journeys and demurrage, the greater is the amount of whatsoever expense is on that account actually incurred. Suppose now a set of judicatories instituted, in such number as shall be sufficient, but not more than sufficient, to secure the community against all denial of justice from this cause: from this aggregate, deduct any number, how small soever, denial of justice in a proportionable degree has place. But scarcely in any country is the aggregate number of judicatories, so great as altogether to exclude denial of justice from this cause: the actual number being reduced below the relatively requisite number by the difficulty of providing for the expense. Suppose six hundred, the greatest number of judicatories, for the necessary expense of which provision can be afforded, and suppose this number but barely sufficient to prevent as above, the denial of justice: put an additional judge, though it be but in one of the whole number of judicatories, you make a defalcation of one from the total number of judicatories, and thereby a proportionable addition to the length of journeys and demurrage, in the instance of at least one judicatory; and to a correspondent amount you produce denial of justice, together with increase of delay, vexation and expense, as above. But for whatever reason you make such addition of one Judge in any one Judicatory, for the same reason should you make that same addition in every other Judicatory. Place then in each Judicatory two Judges, instead of one Judge, you reduce the total number of judicatories to three hundred, instead of six hundred, the number requisite to prevent denial of justice: place in each Judicatory three Judges, you reduce it to two hundred, and so on: producing by every such addition made to the number of Judges in each Judicatory, a correspondent unavoidable addition to denial of justice, together with still greater addition to delay, vexation, and expense.

Ratiocinative. Instructional.

ART. 10. Only by a still more abundantly productive cause, namely law taxes and law fees, official and professional, are these effects of supernumerariousness of Judges, in the production of denial of justice, together with aggravation of delay, vexation, and expense, concealed from general observation.

Ratiocinative.

ART. 11. If, of two Judges, either has, by means of corruption, or sympathy, or antipathy towards this or that individual, a sinister interest which will be promoted by delay,—he has it in his power, not only to produce it to an indefinite extent, but to produce it, without scandal, by pretending doubts; and while in this way promoting the sinister interest, he may be acquiring the reputation of præter-ordinary moral aptitude, on the score of præter-anxiety to judge aright.

Ratiocinative. Instructional.

ART. 12. To France is confined the inade-

that burthen, the necessary aid shall l
ed to him from some other source or
—as, for example, from the purse-
some *voluntary* contributor or co
should any such come forward; or, i
think fit, from the purse of the ad
(notwithstanding that of him it c
be known, whether he be in th
the wrong); or lastly, from that
as a dernier resort.*

3. And that in the long run
grounded appeal, shall profit, i
made by the appellant.

* Note, that under the sys
which the hereby-instituted J
ment all along bears reference
be in existence, in no case has
the basis of his decision any n
than that which has been pr
of the Judge *below*. This s
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...ges being present, cannot
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...e number of these judicatories:
...mber of the instances in which
...ation just described, has place.

...ructional. *Exemplificational.*

... Peculiar to those judicatories in
...hich the species of *pseudonomia*—of
...d Judge-made law, styled *Common*
...ontradistinction to *Equity*, is admin-
... s this *quadruplicity* thus preferred
...stituted to *unity*: in no instance in
... quity is the name of the thing which
...nistered, has it place: not in any one
... ree superior Judicatories, so strangely
... ip, one above another, styled the Vice-
...ellor's Court, the Master of the Rolls'
... and the Lord High Chancellor's Court:
... et in any one of those inferior Judica-
... in which the Judge is styled a Master
...hancery.

... yet is this quadruplicity sufficient in all
... In certain cases, it is trebled: twelve‡
... number of the Judges: the Judges of the
... common Law Courts being packed to-
...er for this purpose. And these cases in
...ch the demand for appropriate intellectual
...ude is regarded as being at a maximum,
...at are they? They are mostly of a sort in
...ch no man in whose instance the most com-
...n sense has place in union with common
...esty, would regard the case as a fit one for
...e being argued: where for instance the ques-
...n is, whether a man shall be deprived of his
...ght, because a lawyer's clerk has made a
...stake, unintentionally or intentionally, in
...e writing of one of the letters in a word.

To the three *puisne*, pronounced *puny*, meaning *junior*, Judges, any one of several very advantageous substitutes might be proposed: any one, or for choice all of them. On an occasion on which the opinion of all four are delivered seriatim, after the chief has delivered his opinion, "*I am of the same opinion*," are the words commonly pronounced by each of the three puisnes. If then it be necessary that for this purpose, on this occasion *words* should be employed, animated substitutes would be necessary. On this supposition, the substitute would have to belong to that class of animals in whose instance, wings with feathers are substituted to arms with hands: a *parrot*, for example, a *mino*, or a *starling*. But when the import is not over complicated, expression may be given to the opinion, by visible as well as by audible signs. Arrayed in judge's robes might be the figure of a man

‡ The number is now fifteen; each of the three Common Law Courts having a Chief and two Puisne Judges.—*Ed.*

or a painter's lay-man, and wire office of the puppet show-man, performed by my Lord Chief Jus-

whole four, the only one in whose any real demand for rationality, or for such, has place, is the Chief For he, being always a lord, and a peer—a member of the House of sometimes even a Cabinet Minister,— authority that depends upon opinion, influence, is to him a subject matter of ive property. On ordinary occasions, him is said whatsoever is said: by the learned persons, either nothing at all is said, or the sort of something which has just been mentioned.

"I have *not* been consulted, and I *will* be heard." Some 67 years ago, did the author of these pages hear Willes, puisne Judge of the King's Bench, utter a declaration in these very words, in the ears of an astonished audience. Not least was the astonishment of the Lord Chief Justice—the great Earl of Mansfield, against whose authority rebellion was thus committed by a speech thus audacious and unprecedented.

Instructional. Exemplificational.

ART. 15. As to the part borne by the House of Lords in judicature, no other imaginable Judicatory can be so unfit for rectifying honest errors.

1. The vast majority of Members are ignorant of the law, and destitute of appropriate knowledge.

2. They are destitute of judicial aptitude, by indolence, and carelessness, the necessary concomitants of pre-eminent opulence.

3. Thence also destitute of appropriate active aptitude.

4. By extensiveness of private connexion, pre-eminently exposed to corrupt partiality.

5. Obligation of attendance, none: those alone attend, with perhaps one or two exceptions, who are brought thither, by the influence of some particular and sinister interest.

6. To crown the absurdity, the Chancellor has the direction of this Judicatory, of which the chief occupation is, the sitting in judgment on his decisions: a complete mockery of justice.

Instructional. Exemplificational.

ART. 16. From the highest, look at the lowest species of Judges—the Justices of the Peace. In quarter sessions, they sit in unlimited numbers.

In comparing the French and English systems together, there will be found in the French practice, errors in principle, but consistency in application. In the English practice, principle, none: inconsistency consummate.

In the French system, suits being classed according to the supposed order of their importance, those to which the least importance is ascribed, are allotted to single-seated Judicatories: those to which the highest degree of importance is ascribed are allotted to the highest number of Judges, who also receive the highest remuneration. The assumed principle is, that the probability of justice is in the direct ratio of the number of Judges in each Judicatory: and upon this assumed principle they act with perfect consistency.

SECTION VI.

Fields of Service.

Enactive.

ART. 1. To each Judicatory belongs its local and its logical field of service.

Enactive.

ART. 2. Of the local or geographical field of the Judge's jurisdiction, the established limits are determined by those of the several contiguous Judicatories.

Enactive.

ART. 3. For this purpose, the whole territory of the State is divided into immediate judicial districts.

Enactive. Expositive.

ART. 4. By the immediate judicial districts, understand the local fields of territory of the immediate Judicatories.

Enactive. Instructional.

ART. 5. Of the judiciary subdistricts the dimensions, and consequently the number of each in the whole territory of the State, will be thus determined. Conceive the whole surface of the territory divided into portions as nearly equal as may be:—form, as near to that of a square as the oblate spheroidical figure of the earth's surface admits. Conceive the seat of the principal *justice chamber*, to be in a *town*, occupying the middle of the square: in such sort, that from the spot the most remote from the justice chamber, a grown person, in a state of ordinary health and strength, will be able to travel on foot, from his or her place of residence to and from the justice chamber in the course of any day of 24 hours, without sleeping elsewhere than at home: an interval of—say six hours—being left for the performance of the judicial service.

Diameter of each square say 24 miles.

Length of the radius say 12 miles.

Greatest number of miles thus to be travelled in the day of 24 hours, 24 miles.

In this state of things may be seen the standard of reference: the dimensions proposed to be, in each individual case given to the immediate judiciary district, as nearly as the causes of variation will allow.

Causes of variation, these—

1. The inequalities of the earth's surface.

2. The interposition of surface covered with water on the line of road.

Section VII.

Intercommunity of Judicial Service.

Instructional.

Art. 1. As in all departments in general, so in particular in the Judicial, not for the gratification of individual pride, but for the fulfilment of the ends of Government, is authority committed to public functionaries.

Enactive. Ratiocinative. Expositive.

Art. 2. Between the Judge of one Immediate Judicatory and that of another, intercommunity of service as complete as the nature of the case admits, has place. For maximization of the execution and effect given to the ordinances of the law,—and for minimization of delay, vexation, and expense,—to every Judge, who (with relation to the suit, or initiatory judicial application in question) is the original, or say the originating Judge, belongs, under the conditions stated in the Procedure Code, the discretionary power of *invasion*, with reference to the *local* field of service of every other Immediate Judge. Name of this same power,—*power of invasion*.

Expositive.

Art. 3. By the originating Judge, understand him in whose Judicatory the initiatory juridical application has been made; application to that same individual effect not having, by that same applicant, been made to any other Judicatory.

An *initiatory application* is either *petitory*, or *simply informative: petitory*, when it has for its object the obtaining admission for a demand to a determinate effect made by the applicant, whether on his own account, or on account of some other person certain: *simply informative*, when made by a person without desire expressed, of becoming himself pursuer in a suit or petitioner for any other purpose, or of seeing any other determinate person admitted in that character: as where the subject matter of the information is—the supposed commission of some supposed offence by some person as yet unknown,—or the existence of some *danger* whether to person or to property, to the obviating of which the exercise of judicial authority may become conducive. See Procedure Code, Ch. xii. Initiatory hearing.

Instructional.

Art. 4. Of the *cases* in which, *purposes* for which, and *acts* or say *operations* by which, juridical *invasion* as above, may be necessary to the accomplishment of the ends of justice, examples are as follows:—

I. *Cases.* Situated within the territory proposed to be invaded, a person or a thing necessary to be acted upon by the invading Judge, for the giving execution and effect to the portion of law on which the application is grounded.

II. *Purposes.* 1. Securing eventually employable means of execution for judicial orders, by which the service demanded by a pursuer or other applicant, will be rendered: 2. Obtainment of means of proof, or say evidences, or sources of evidence necessary to constitute a ground in point of fact for the demand.

III. *Acts*, or say *Operations*. 1. Accersition: 2. Prehension, followed by adduction, sistition, or transduction: 3. Epistolary interrogation: 4. Visitation and inspection.

Instructional.

Art. 5. Between one and another of these several modes of proceeding, the nature of the case will commonly require the option to be made. For the considerations by which it will be to be determined, see the Procedure Code, Ch. xxi. Judicial Transfer, and Ch. xviii. Means of Execution.

Enactive. Instructional.

Art. 6. Of every such act of invasion, the *invading* will, in the promptest mode in use, give notification to the *invaded* Judge. For appropriate formularies, see the Procedure Code, Ch. xxi.

Enactive. Instructional.

Art. 7. If, in his opinion, consideration had of circumstances such as the above, the ends of justice may be more effectually attained in this or that *other* Judicatory: the *original* or say *originating Judge* will dismiss the application made to himself. He will in that case point out such other Judicatory in which, for the reasons by him declared, he recommends it to be made.

Instructional.

Art. 8. If, on the examination, it appears that, on occasion of this same demand, any petition or informative application has already been made by or on behalf of the same applicant in another Judicatory, and that no such recommendation as per Art. 7, has therein been given, it will be matter of consideration for the Judge, whether to retain the application, or, as being vexatious, dismiss it. For the responsibility, compensational, and punitional, which, in the case of such virtual appeal, if ungrounded, may be requisite for the repression of juridical vexation; see the Penal and Procedure Codes.

Enactive.

Art. 9. Every such invading Judge takes with him into the invaded territory his own rank and power, subject only to the rank and power of the Judge of the territory so invaded.

Enactive.

Art. 10. In so far as, if the order of the one Judge is executed, the execution of an

order of the other Judge is thereby impossibilized,—the prevalence belongs generally to the order to which execution has begun to be given, before it has begun to be given to the other.

Instructional.

ART. 11. Of the incompatibility thus brought to view, examples are as follows:—

I. By an *accersitive*, or say hither-calling mandate, of the invading Judge, the attendance of a certain person at a certain point of time at his Judicatory, is required. By the invaded Judge, he being ignorant of such order, the attendance of that same person at that same point of time at his Judicatory, is by an appropriate mandate required.

II. By a *prehension* mandate of the invading Judge, for the purpose of securing the means of eventual *execution*, to a demand on the ground of debt, property situated within the territory of the invaded Judge, is required to be prehended and kept in custody: by a like order of the invaded Judge, for the like purpose, on occasion of a similar demand by another demandant, that same property is required to be so dealt with at the same point of time for the benefit of such other demandant.

For examples of the case where the subject matter of prehension is a thing immoveable, see the Procedure Code, Ch. xxii. PREHENSION.

So also when it is a thing incorporeal.

So also as to what ought to be deemed a *beginning* of such execution.

Enactive.

ART. 12. But in case of disagreement as to the priority in point of time, the prevalence belongs provisionally to the mandate of the invaded Judge.

Expositive. Enactive.

ART. 13. *Jurisdiction-adjustive function.* To this function exercise is given, by an imperative mandate, declaring on Appeal from either of the thus conflicting mandates, to which of them execution shall be definitively given. This function, if the territories are situated both within the same Appellate Judicial District, belongs to the *Judge Appellate*; if in different Appellate Judicial Districts, to the *Justice Minister*.

Instructional.

ART. 14. In the exercise of this same *Jurisdiction-adjustive function*, it will be for the superordinate functionary to take care, lest by the one subordinate, the invasion be unduly declined or unduly performed; or by the other, unduly acquiesced in or opposed: as also, lest, by collusion on the part of one or both, priority of execution in favour of this or that party on either side, be unduly obtained.

Enactive. Instructional.

ART. 15. *Provisional* only is the prevalence in the above examples spoken of. Between counter-demandants, whether in the same or in different judicial territories,—for the arrangements made for ultimate equality or proportionality of distribution, as of burthens, so of benefits; see the Procedure Code, Ch. xiv. SUITS, THEIR SORTS.

Ratiocinative.

ART. 16. This intercommunity, why instituted?

Answer.

Because, in the whole territory of the state, there exists not any spot on which, for giving effect to a just demand, and giving in that respect execution and effect to the correspondent portion of law, it may not be necessary for the judicatory applied to, whatever it be, to exercise its authority within the territory of any and every other judicatory: and this, whatsoever may be the relation of the individual to the suit, whether pursuer, defendant, witness, or the *proxy* or *assistant* of a pursuer, or a defendant.

Expositive. Instructional.

ART. 17. Consistently with the intercommunity, with the correspondent universally mutual power of invasion of jurisdiction, as here established, how is it, that to any Immediate Judicatory, any peculiar local field of service can belong?

Answers.

1. Of each suit, or other judicial application, the cognizance will belong in the first instance to the Immediate Judicatory of the Judicial District, in the Justice-Chamber of which the judicial application is made: and by any person may judicial application be made, to the judicatory in the territory of which, at that moment, he is in existence.

2. In the ordinary state of things, or in the state of things most frequently exemplified, to the lot of that same judge will it fall to carry the suit through, from beginning to end: to elicit the whole of the evidence, and after issuing thereupon his definitive decree, to give execution and effect to it accordingly: and, as well for the purpose of the elicitation of the evidence, as for the purpose of such execution and effect,—the *persons* on whom, and the *things* on which, it will be necessary for him to operate, will be situated within that same district.

3. In comparison of *this* state of things, an extraordinary one is, that in which, for any purpose, the *suit* or other judicial *application* will have to pass, though it be but for a moment, into the hands of the judge of any district other than that of the judge first applied to,—the *originating* judge, as above.

4. This being the case—it follows that the judicatory in which the *suit* originates, will be the judicatory in which the *application* in which it originated was made, before the applicant had made in any other judicatory an application demanding at the hands of the judge that same service.

and persons which constitute the subject matters of the exercise given to it, are respectively, in the case of each subdepartment belonging to that department, a different class of things and persons, according to the nature of the business of each such subdepartment: whereas, of the exercise given to this function in the case of a Judge, the subject matters are—all things, and all persons, nearly, if not entirely, without exception: which considered—on the part of the Legislator accordingly, particular care is requisite in marking out the limits, by which the exercise given to it, is circumscribed.

Expositive. Instructional.

Art. 9. In every instance, in which exercise is given to the transmissive function, so far as it is productive of its intended effect, a correspondent function, to which exercise is given, with reference to the same subject matter, is the *acceptive;* and with the intervention of the like intermediate and subordinate functionaries, to this function also, in relation to those same subject matters, may exercise be given by a Judge.

Expositive.

Art. 10. If, of the subject matter in question, transmission is considered, as having, on any anterior occasion been made, the function, to which exercise is given by the succeeding transmission, may be styled the *retro-transmissive:* and so, in the case of *acception* and retro-acception.

Expositive. Instructional.

Art. 11. According to the relative situation of the functionary, *transmitting* or say *sending,* (relation had to the functionary *sent to,*) transmission will be either *à suprà, ab infrà,* or *ex æquo:* and so in regard to acceptance. Of these modifications, the *à suprà* transmission, is the one most essential, not to say the only one which is absolutely and independently essential, to the situation of a Judge.

Expositive. Instructional.

Art. 12. As to the faculties, to which, in his intercourse with another functionary, or with any other person, application is made by a Judge,—they are either the *physical* or say *corporeal;* or the *psychological* or say *mental:* the mental faculties again, are either the *intellectual,* or the *volitional.* A communication made by a Judge *à suprà,* acting as such, is, if applied to the volitional faculty of a functionary, or any other person, styled a *mandate;* which may be either *jussive,* or *inhibitive,* or say *prohibitive: jussive,* in so far as the act commanded to be exercised is a positive act; *inhibitive* or say *prohibitive,* in so far as it is a negative act, consisting in *abstinence,* from the performance of some positive act.

Enactive. Expositive.

Art. 13. Exercised by all Judges, are the several functions, to which exercise is given by the issuing of the several mandates, by execution of which, or compliance with which, the business of procedure is carried on.

Examples, are those which follow:—

1. *Accersitive,* or say *hither-calling:* exercised by an incidental mandate, sent to a party for example, or to an extraneous witness, requiring his attendance at the Judicatory.

2. *Missive,* or say *thither-sending.*

3. *Scrutative,* or say *search-making,* or *search-commanding:* exercised by search made, or commanded to be made, for the body of a person, or thing, or both.

4. *Prehensive:* exercised by causing possession to be taken of a person or a thing, or both.

5. *Sistitive:* exercised by causing the subject matter of the prehension, as above, to be kept at the place at which it has been prehended.

6. *Adductive:* exercised by causing it to be brought to the Judicatory.

7. *Extraditive,* or say *transmissive,* or *transductive:* exercised by causing it to be delivered at some place, other than that, from which the mandate issued.

8. *Restitutive:* a mode of the *extraditive:* exercised by causing delivery to be made of a person or a thing into the custody of some person, in whose custody, he or it, had antecedently been.

9. *Eliminative,* or say *abductive,* or say *ejective:* exercised by simply causing the subject matter to be removed out of the place in question, without mention made of any particular place into which the removal shall be performed.

For other functions of a judicial nature, see Ch. xxv. Local Headmen; Ch. xxvi. Local Registrars; Ch. xxviii. Prehensors, and the *Procedure Code;* Ch. xxii. Prehension.

Expositive.

Art. 14. By the *judicative,* or say *appropriately executive* function exercisable by a Judge, by which, as per Art. 4, execution and effect is given to ordinances of the Legislature or a Sublegislature, understand, in like manner, the function, by the exercise of which execution and effect is given to any alleged rule of so styled *unwritten law,* alias *conjectural,* alias *inferential,* alias *jurisprudential,* alias *Judge-made* law: to wit, so long, and in so far, as any part of the rule of action, and basis of judicature, has been left still floating, or rather tottering, upon that imaginary, purely fictitious, nebulous, and perpetually delusive, and uncertainty-and-insecurity-perpetuating ground.

Expositive.

Art. 15. By exercise given to, and appropriate application made of, the power attached to the *executive* function, as just described, exercise will be given to certain other functions, which form respectively the subject matter of so many sections hereinafter ensuing:

that is to say, Section 10, *Judges' self-suppletive function;* Section 11, *Judges' sedative function;* Section 12, *Judges' aid-compelling function;* Section 19, *Judges' contested-interpretation-reporting function;* Section 20, *Judges' eventually-emendative function;* Section 21, *Judges' sistitive or say execution-staying function;* Section 22, *Judges' pre-interpretative function;* Section 24, *Judges' non-contestational-evidence-elicitation function.*

SECTION IX.

Judges, &c., Elementary Functions.

Expositive.

ART. 1. By the elementary functions belonging to a Judge, understand those, the conjunct exercise of which is, in the ordinary course of his business, included in the exercise of his several other functions, as per Section 8, *Functions common to Judges;* and in particular of the *executive* function, that being the one to the exercise of which the exercise of all the other functions is subservient.

Elementary functions common to every Judicatory, including both grades of Judicatories, Immediate and Appellate, and exercised personally by the Judge, are the following:—

1. *Auditive* function, as applied to *oral* discourse.

2. *Lective* function, as applied to *written* discourse.

3. *Inspective* function, as applied to written discourse, or any other visible document.

4. *Interrogative* function, orally exercised.

5. *Interrogative* function, *epistolarily*, or otherwise *scriptitiously* exercised. Note, that the interrogative is a particular application made of the hereinafter-mentioned *imperative* function.

6. *Commentative* function, exercised by making observation on what has been heard or seen.

7. *Ratiocinative*, or say *Reason-giving* function: exercised, by stating the considerations, which, in the character of inducements, led to the formation of the declaratory decree.

8. *Declaratively-decretive*, or say *opinative* function: exercised, by the delivery of an *opinion:* declaring that the meaning of the law is so and so, or that the fact or facts in question are so and so: with the inference as to the state of rights and obligations on both sides.

9. *Imperatively-decretive*, or say *ultimately-mandative*, or say *imperative* function: exercised, by the issuing of a judicial ordinance or mandate, in pursuance of the exercise given to the declaratively-decretive function.

10. *Recordation-causing*, or say *Recordative* function: exercised, by causing entry to be made in a book, of the result of the exercise given to any or all of the above-mentioned functions. Note, that in the recordative, are included the minutative and the custoditive: the *minutative*, by the exercise of which the entries are made; the *custoditive*, by the exercise of which they are kept and preserved.

11. *Incidentally*, or say *interlocutorily-mandative*, or say *directive:* exercised, by causing it to be received, by the several persons, at whose hands, on the occasion, and in consequence of a judicial application made to him, for the giving effect to the exercise of his *executive* function, antecedently to the exercise given by him to his *imperatively-decretive*, or say *ultimately-mandative* function, as above.

12. *Incidentally-requisitive.* This function is *in itself* the same with the incidentally-mandative: sole point of difference, the situation of the addressee, with reference to that of the addressor: the situation being—in the case of the incidentally-mandative function—subordinate; in the case of the requisitive function, co-ordinate, or in any way superordinate.

13. *Incidentally-receptive:* exercised by the reception of evidence in its several *modes*, or say *forms*, from its several *sources*, at the hands of the respective *Evidence-holders.* As to these, see Ch. vi. LEGISLATURE, Section 27, *Legislation Inquiry Judicatory.* Arts. 10, 11, 12.

14. *Incidentally-informative:* exercised by information given to the various persons—whether functionaries or persons at large—to whose minds the exercise proper to be given to the several functions, *decretive*, *mandative*, and *requisitive*, as above, requires that the information should be made *present.*

Expositive.

ART. 2. Note, as to the *inspective* function. In so far as the subject matter of it is *a person*, considered in respect of his conduct, in particular in respect of his conduct in relation to his *office*,—exercised in a more especial manner is this function in relation to the *Registrar*, he being the officer, by whom, or under whose direction, permanent account is given of every discourse uttered, and every other act exercised, by the several *actors* on the judicial theatre: as to whom, see Section 2.

Expositive.

ART. 3. Under the inspective function, is included what may be termed the *quasi-inspective:* understand thereby, the function to which exercise is given, in so far as it is by a sense, other than that of *sight*, that the *perception* and correspondent *information* is obtained.

Expositive.

ART. 4. A mode of the inspective function, is the *visitative:* exercised, by exercise given to the inspective function, in so far as, on the occasion of such exercise, *change of place* is employed on the part of the judge.

[illegible] the indirect [illegible] the [illegible] the [illegible] the

so many modifications of the ultimately-decretive function, exercised as above, by the Immediate Judicatory: but, in practice, in whichsoever of these points of view they are considered, will make no difference.

Ratiocinative.

ART. 14. Objection. The imperative has been stated as a function common to all judges. The Conciliation Judicatory, invented in Denmark, has been applauded, and the leading principle of it, adopted and employed in various other political States: in particular in France by Buonaparte's Codes. Of its beneficial effects, the number of cases finally determined by the Danish Judicatories, afford a demonstration. Admitting, what cannot but be admitted, that for a large portion of the field of law and procedure, the imperative function must unavoidably be given to the judge, even on the first inquiry, and that in these Danish Judicatories, and all the judicatories derived from them, the opinative decree given by the judicatory, is not of itself conclusive, but leaves the door open to an application to an ordinary judicatory, in which the imperative function is added to the rest—still, why not imitate an arrangement, the usefulness of which, has to the general satisfaction of civilized nations, been so adequately demonstrated by experience? and accordingly why not employ it, in so far as employment has been in that case given to it?

Answer. By the judiciary system as here detailed, (with the imperative function attached in every case, to the others exercised by the judge,) will be done, all the good which ever can have been done by any one of these Conciliation Judicatories: and moreover, a great deal, which, constituted as they are, it has not been possible for them to do.

In the first place comes the list of those suits, to which it was found unable to give termination. Compared to those, to which it did give termination, small it is true, were they in number: but in respect of the aggregate importance, relation had to the pecuniary circumstances of the parties, there is no saying how great may have been the ratio of this small minority, to what it was in that.

When without expense, a chance for justice, were it ever so faint, was seen to be obtainable, no ground of complaint so frivolous, as not to send the claimant to the spot, where, without any expense but that of time, and without any part of that vast load of expense, delay, and vexation, which in all other instances they saw manufactured for the sake of the *profit*, this same chance, they saw obtainable.

Deficient, and partial, and deceptive, must have been in many a case the stock of evidence.

Compulsory and thence adequate means of procuring evidence—such evidence as in each individual suit, the case happened to furnish—none.

Means of securing genuineness on the part of the real and written evidence, none: means of securing against mendacity, negligence, and temerity, such personal evidence as was found obtainable—of securing, to wit, by appropriate and adequate remedies, satisfactional and punitional—none.

Judicatory many-seated: consumed consequently in super-useful discussions, on each individual occasion, a quantity of time more or less considerable: at the same time, their attention withdrawn from the subject by a more or less considerable proportion of the judges.

On the part of all these judges, one excepted, waste of time more or less considerable. Had the single-seated system been established, so many meritorious men, by each of whom, supposing him invested with the imperative function, in addition to the rest, such service as he was capable of, might have been rendered in a separate judicatory: and so, a correspondent quantity of delay: vexation and expense, saved to the parties: expense? yes: for time consumed in journeys to and fro and demurrage, is expense.

True it is, that in Denmark at any rate, whatsoever good was in this way done to suitors, was done without any expense to the public, in the article of remuneration for the judge.

But even as to this saving, if thought proper to be made, no reason appears for supposing that under the here proposed system it might not be made.

Of the probability of such economy, that very example affords very strongly presumptive evidence. Serving in that way, only as one in a crowd—his influence no more than fractionary, and unfortified with any imperative and coercive power,—would not the same man be equally ready to render that same service, when standing alone, and endowed by that supremely-inviting attribute?

But, it will be said, of all these men, there seems no reason for supposing that there was a single one, who to this work of generous supererogation ever gave the whole of his time: one would attend on one day; another, on another, just as each found most convenient.

It may be so: and for that reason it is, that on the present plan, remuneration is provided: although by the admission of competition, in the case of this service, as in the case of service in all other shapes, this remuneration will be cut down to the smallest portion which each person will be content to take.

SECTION X.

Judges' Self-Suppletive Function.

Enactive. Expositive. Ratiocinative.

ART. 1. Lest the business of the office should at any time, though it were but for a day, be at a stand, to every Judge Immediate

belongs the *power of self-supply*, with the obligation of keeping it in exercise. Exercised is this power, by the location of an at-all-times dislocable *Depute*.

Expositive.

Art. 2. By a *Depute*, understand in this case, a functionary who, being thus located and dislocable, exercises, on the occasions on which the business might otherwise be at a stand, the functions belonging to the office, with certain exceptions excepted, which are as follow:

Enactive.

Art. 3. Exception 1. To a Judge Depute belongs not the power, given by Ch. vi. Legislature, Section 2, to the Judge Principal: namely that of representing an act of the Legislature as being anti-constitutional.

Enactive.

Art. 4. Exception 2. Nor the power of locating subordinate functionaries, as per Section 8, *Functions common to Judges*, except in case of urgent need, to the senior in service, on the death of the Judge Principal, and for a time ending with the location of a successor to such Judge Principal.

Enactive.

Art. 5. Exception 3. Nor the power of dislocating any such functionary, except in case of urgent need; and, for a time ending with the location of a successor to such Judge Principal.

Enactive.

Art. 6. Of occasions on which, but for the existence of a Depute, the business of the office would be at a stand, examples are the following:—

1. Inaptitude of the Judge Principal, by means of infirmity, whether of body or mind.
2. Remoteness of the Judge Principal, from the judgment-seat, by whatsoever cause produced.
3. Vacancy of the Office of Judge Principal.

Enactive.

Art. 7. Exceptions excepted, as per Arts. 2, 3, 4, 5, to every branch of the service of the Principal, does the power of the Depute extend; both fields of service included—*logical* as well as *local*; as to which see Section 6, *Fields of Service*.

Enactive. Ratiocinative.

Art. 8. *Punitionally*, as well as *compensationally*, and *dislocationally*,—for the acts of the Depute is the Principal,—responsible. By acceptance of the office, not simply for performance, but for apt and complete performance, of the functions, does he contract: *irresponsible*, he might safely commit breach of trust in any shape, by the instrumentality of any person consenting to subject himself to the risk.

Expositive.

Art. 9. By *punitionally* responsible, understand responsible to the purpose of being subjected to punishment; that is to say to sufferance under the name of *punishment*: and this, in some cases, *over* and *above* the sufferance produced by the exaction of compensation; in other cases *in lieu* of the sufferance produced by such exaction; namely in those cases in which compensation cannot have place: for example, where there is no individual specially wronged: and so as to *compensationally* and *dislocationally*.

Enactive. Instructional.

Art. 10. Within [ ] days after his own location, a Judge Principal is expected to make such location as per Art. 1., and thereafter, immediately upon the dislocation of any such Depute, to locate a succeeding one.

Enactive.

Art. 11. The instrument of location, with the year, month, and day of the month, will be signed by the Principal; and, in token of acceptance, by the Depute.

Enactive.

Art. 12. Of every such instrument, exemplars, as per Ch. viii. Prime Minister, Section 10, *Registration System*, will be made, and disposed of, as follows:—

1. Kept in the office of the Immediate Judiciary Registrar, one.
2. Transmitted to the office of the Apellate Judiciary Registrar of the Appellate Judicatory to which the Judge Immediate in question is subordinate, one.
3. Transmitted to the Justice Minister's office, one.
4. Kept by the Locator, one.
5. Delivered to, and kept by the Locatee, one.

Enactive.

Art. 13. In case of emergency,—created, for example, by sudden calamity or hostility, —lest time for *acceptance* be wanting, a Judge Immediate, may, by appropriate instruments, constitute *Deputes occasional*, in any number, without any such acceptance: a second, to serve in default of the first; a third, to serve in default of the first and second; and so on. But only in case of emergency will he execute any such instrument: and, on his responsibility, so soon as the emergency has ceased, he will cancel the instrument, having for that purpose called it in.

Enactive.

Art. 14. Locable, in the situation of Judge-depute, is any person whatsoever: his locator, the Judge Principal, being for such his depute responsible, as per Arts. 8 and 9.

Enactive.

ART. 15. Dislocable, or suspendible, at any time, is the Judge Depute by his Principal: so likewise by any of the authorities, by which the Principal is dislocable, as per Section 30, *Dislocable how*; and this—without judicial forms, such as those made requisite in and by Ch. ix. MINISTERS COLLECTIVELY, Section 21, *Oppression obviated.*

Enactive.

ART. 16. Possessed of this same self-suppletive function are—not only the judges but the several other magisterial functionaries in the judicial department, as per Section 3, *Judiciary Functionaries*, and the several ministerial functionaries, subordinate respectively to those same magisterial functionaries.

Instructional. Ratiocinative.

ART. 17. For the beneficial effects resulting from the allottment of this function, to the functionaries belonging to the judicial department, and for the proof that no ground has place for any such apprehension as that of a deficiency, in the number of apt persons ready and willing to serve in the situation of deputes, as above, see Ch. ix. MINISTERS COLLECTIVELY, Section 6, *Self-suppletive function*, Arts. 12, 13: the reasons which apply to the administrational department applying also to the judiciary.

Ratiocinative.

ART. 18. 1. By the here proposed deputation system, is afforded the only possible mode of providing sufficiency, without superfluity, in the number of the judicatories: of steering always clear, between insufficiency and excess. *Emblem*, the boots which fitted themselves to every leg.

2. Thus are conjoined the maximums of amplitude and frugality.

3. Still, to exclude abuse, requires the Legislature's, and the public's, unremitted vigilance.

4. Number deficient; proportioned to deficiency is delay: and delay, in so far as being needless, it is wilful, is *denial of justice*. Deficiency and superfluity may exist together: deficiency in one spot, superfluity in another; and, if the field of jurisdiction be parcelled out in the way of logical division, both may have place on the same spot; some Judicatories overloaded; others idle: and, proportioned to superfluity in the number of the Judicatories, is superfluity in the expense.

5. As to what regards expense, under this system of frugality, deficiency, being apparently at its maximum, apprehensions on this score will be apt to present themselves: no pay given, no workmen (it may be thought) will be to be had. But, of these same apprehensions, further consideration and experience join in demonstrating the ungroundedness.

6. By being left unpaid, service in this shape is not left unrewarded.

To this judicial situation, rewards attached by the nature of the case are—1. The distinction—2. The power—3. Reputation, rising with good desert.

7. 1. Distinction—2. Power. For the value set upon reward in these shapes, note several examples.

I. English Small-Debt Courts, called *Courts of Conscience*. *Field of jurisdiction* narrow, as low as 40s.* *Power*, not an integer, but a fraction, and that so small a one: numerator, 1: denominator, a score or more: while in the situation of Judge Depute, the logical field of jurisdiction is boundless; the power, integral.

II. *Danish Conciliation Courts.* Logical field, wide compared with the above English: narrow, compared with the one here proposed: power, fractionized.

III. English *Justices of the Peace Courts.* Examples these, too conspicuous to be left unnoticed: though, by the comparatively small fees, and the casual emoluments attached to functions other than their judicial ones, the case is rendered not so simple as either of the two above-mentioned ones.

8. In the present case, to reward, in the above-mentioned shapes in possession, is added, in expectancy, the independent and superior power, with pay. By this, may be procured more strictness of attendance, than could be by any other method: for, to all who have not submitted to this strictness, all access to the pecuniary reward, with the independent power, is barred.

9. Nor yet are the evils of monopoly thus let in: for deficiency in the number of these functionaries cannot have place, without its being the interest of those who have the power that it should be filled up.

10. By every hour of his attendance, the depute's capacity of promotion will be brought nearer: thus will every act of good desert in this shape, bring with it its own reward.

11. Moreover, relatively considered, as between each one and his colleagues, each one who bestows the *hour* will gain an advantage over all who do not: and the *logical* field being at its maximum, small must be the *local* field that will not furnish a demand for deputes permanent, more than one, or even two.

12. A Judge Depute permanent, will thus be in the condition of an *apprentice*, to whom uniform good behaviour affords a proportionable prospect of being taken into *partnership*.

13. All having this to gain, none have any positive loss to suffer. Hence will naturally be formed two classes:—

1. Closely attendant, those who look to office with pay and the superior power: say, *stipendiaries in expectancy*.

2. Loosely attendant, those content with the inferior power without pay, the occupation

* In several instances, it has been raised to £5. —*Ed.*

being agreeable to them, so long as the burthen of attendance is not too heavy: say, *gratuitously serving*, or *honorary deputes*.

14. A check, which, of itself, applies itself to abuse of the patronage by the Judge Principal, is—that the value of the expectant situations will be inversely as the number of the individuals by whom they are occupied: thence, whatsoever be his desire, power of rendering the number excessive will not accompany it. Thus stands the matter in the case of the *Stipendiaries in expectancy*.

15. Not equally so, in the case of the *Honoraries*. When pure from burthen, the slightest token of honourable distinction is, to most men, acceptable. Thus, but for some remedy, the establishment would be infested with sinecures. The sinecurists, though they cost no money, might in various other ways, be mischievous. A depute might even be appointed for the purpose of showing undue favour to this or that particular individual.

16. For remedy, let every depute permanent be bound to a certain minimum of attendance in the year: those who failed to bestow it, would silently drop out of the list, without the harsh operation of dislocation, or resignation in form.

17. The two classes, not having any distinctive mark, would have no determinate excitement to enmity: yet, of emulation, not only as between individual and individual, but as between class and class, the service would have the benefit.

18. Lest, by indolence, or ill humour, attendance, when requisite, should be withholden, and justice thus delayed, power of mulcting, for non-attendance after summons, might be given to the Judge Principal.

19. By the suppletive or deputation system, aid will be afforded towards the minimization of Principal's pay. If the mere distinction and power of a depute suffices to produce a certain quantity of attendance, much greater will be the quantity producible by the addition of pay and superior power: and, so long as the burthen of attendance is not intolerable, the pay may be made less and less; and, thence, greater and greater relish for the occupation, and in so far appropriate active aptitude, may be secured.

20. So, if, by the bare *expectancy* of a given quantity of pay, a certain quantity of attendance is produced,—by immediate *possession*, either increase of attendance, or acceptance of diminished pay, may be produced.

21. Objection. True: number of aspirants may be abundant; and yet, considering what in this line of service aptitude is, apt aspirants may be altogether wanting, if pay, in possession or expectancy, be not in view.

22. Answer—Quantum requisite, not so rare as might be imagined: For,

In comparison of the actual customary demand under the English technical system, the requisite quantum of peculiar knowledge will, by all-comprehensive codification, be reduced to next to nothing.

23. When adequate appropriate knowledge has thus been rendered common, adequate appropriate judgment will not be so rare as to require extra pay.

24. Of appropriate active aptitude likewise, —(the difficulties attached to judge-made law and technical procedure not having place under this Code,) a moderate—a comparatively small quantity—will, in this official situation, suffice. In the profession of an advocate, it is, even under this system, of prime importance; that is to say, to each individual client.

Section XI.

Judges' Sedative Function.

Enactive.

Art. 1. To the Judge in each Judicatory belongs the *sedative* function: *Sedative*, or say *Disturbance-suppressive*, relation had to the business of the judicial theatre.

Expositive.

Art. 2. By the *sedative* function, understand that which has for its object the securing the judicative function against disturbance; parties against useless delay; and actors on the judicial theatre, against needless vexation and annoyance.*

Enactive.

Art. 3. In the exercise of this function, power is given to the judge, in case of necessity, to cause eliminate out of the judicial theatre, any actor, by whose misbehaviour any such disturbance is produced.

Enactive.

Art. 4. So, in case of necessity, whether for terminating the offence, or preventing the repetition of it, by the same offender, or by others, imprisonment, namely, for a time limited in the imperative decree or sentence.

Enactive.

Art. 5. So, in lieu of imprisonment, or at the expiration of the term appointed for imprisonment, obligation to enter into a written engagement for abstaining from the like offences, for a term limited: with or without a bondsman or bondsmen, who engage eventually to pay to the use of the public, money, to the extent of a sum specified, in the event of his subsequently committing the like offence.

Enactive.

Art. 6. So, in case of necessity, for the

* For modes of disturbance and annoyance, see Ch. vi. Legislature, Section 16 (Election Code, Section 13) and Penal Code, tit. *Simple corporal vexation*.

termination of noisome clamour, either where the continued attendance of the offender is needed; or for example's sake,—in *lieu* of elimination, *gagging*. For the *instrument* to be employed, and the mode of applying it, see Section 33, *Judiciary apparatus*.

Enactive.

ART. 7. So, in case of necessity, for termination or prevention of dangerous or noisome action, *pinioning* or *booting*, or both, as the case may require: that is to say, where the continued attendance of the offender is still needed in the Justice Chamber, or for example's sake.

Expositive.

ART. 8. By *pinioning*, understand confining the arms by means of the instrument applied to persons insane, under the denomination of *the strait waistcoat*.

Expositive.

ART. 9. By *booting*, understand the confining the lower extremities by means and within the limits of one and the same *boot;* in both cases, without bodily uneasiness, other than the least which is necessary to the production of the effect.

Enactive.

ART. 10. So, in case of necessity, for prevention of escape, the *strait petticoat*.

Expositive.

ART. 11. By the *strait petticoat*, understand an instrument having for its object the applying to the action of walking any requisite degree of retardation.*

Enactive.

ART. 12. For remedy, in case of alleged abuse of these same powers, see Section 18, *Incidental Complaint-Book*.

Enactive.

ART. 13. Wheresoever he goes, whether it be on regular out-door-duty, as per Ch. xiii. Section 2, or incidentally, for the purpose of applying to any individually-apprehended offence, a preventive, or to any chronical offence, a suppressive remedy, the Judge carries with him, the power of giving exercise to the sedative function, in the several modes in this section mentioned.

Instructional. Ratiocinative.

ART. 14. Whatsoever be the branch of service, whatsoever the office, whatsoever the nature of the service, whatsoever the condition of the functionary,—indispensable is the necessity of his having in hand sedative power, adequate to the purpose of securing against disturbance, at the hands of all persons whatsoever, the function he is occupied in the exercise of: persons in situations superordinate to his own, and at the same time possessed of directive power with relation to his own, alone excepted. If, in contemplation of lowness of grade, and consequent deficiency in respect of appropriate aptitude, there be in any other department in the Judiciary, any description of functionaries, to whom it is not thought advisable to intrust this power,—it will rest with the Legislature to search them out, and by apt and adequate description, to render them in this respect effectually distinguishable from all others.

SECTION XII.

Judges' Aid-compelling Function.

Expositive.

ART. 1. To this function exercise is given, when, for giving execution and effect to any Legislative ordinance through the medium of the judicial authority, the physical power of the ministerial subordinate of the judicatory, being insufficient, or not at hand, a demand has place for such other assistance as the state of persons and things furnishes.

Instructional.

ART. 2. Of the purposes, for which the need of the exercise of this function may have place, the following are examples:—

1. Discovery or pursuit of a latent or fugitive malefactor, or other defendant or proposed defendant.

2. Prehension of one from whom resistance has been experienced, or is, on adequate grounds, apprehended.

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* In this case, the principle, applied by the *strait waistcoat* to the *upper* extremities, is applied to the *lower*. No pain is suffered in the *former* case; as little in this latter. In the former case, the utmost *extra-force* capable of being conferred by *insanity*, is subdued; not less effectually would be the utmost force capable of being exerted by the strongest man in a state of mental sanity.

But, where the strait *petticoat* is employed, so might the strait *waistcoat* have to be employed along with it: otherwise the hands might be effectually employed in the removal of whatever obstructions were applied by the strait *petticoat*.

Thus might the use of the needlessly-afflictive and odium-inspiring instruments called *irons*, be altogether superseded: irons—in their two species, namely, *manacles*, applied to the upper extremities; *fetters*, applied to the lower.

At the time of the first French Revolution, a medical man of the name *Guillot*, invented the so much talked of instrument, which from him took the name of the *Guillotine*. Of this invention, the object and effect was to minimize the suffering produced by the death punishment, called *decapitation*, or say *beheading*. For the service thus done to mankind, the retribution received by the benevolent and beneficent philosopher, at the hands of the prejudiced and the thoughtless, in but too great numbers, was the reproach of *cruelty*. To no inconsiderable an extent the like retribution can scarcely fail to await the proposer of the herein above-mentioned instruments.

[illegible] termination to a course of con- [illegible] carrying on to the injury of [illegible] property, by malefactors, rendered [illegible] members, not otherwise sub- [illegible]

[illegible] *Enactive.*

Art. [illegible] A person whose aid is thus called [illegible] to the purpose and to the extent [illegible] constituted as per Section 3, a [illegible] officer of justice.

[illegible] *Instructional.*

[illegible] Exercise, or non-exercise of this [illegible] number of the persons on whom the [illegible] shall be employed,—man- [illegible] shall be employed,—as to these [illegible] on all occasions in general, [illegible] particular, *minimize evil*, will be [illegible]

[illegible] *Instructional.*

[illegible] accordingly, as to choice of persons, [illegible] be to be preferred, whose services [illegible] employed, with least detriment, [illegible] individual concerns, and those [illegible] personally connected with them, as to [illegible]

[illegible] *Instructional.*

[illegible] Exceptions excepted, every person [illegible] requisition, to give aid to any func- [illegible] purpose of giving execution [illegible] part of the law.

[illegible] making the requisitions, the [illegible] acts in disobedience to [illegible] to the authority, of [illegible]

[illegible] by him is represented [illegible] would be of the [illegible] would operate in giving [illegible] law, is not in truth [illegible] the contrary an act [illegible]

[illegible] individual so called upon, is [illegible] consideration of his or her [illegible]

[illegible] restrained by timidity [illegible]

[illegible] *Instructional.*

[illegible] force, males will [illegible] be preferred to fe- [illegible] should fail, [illegible] when a female is [illegible] to be given [illegible] same sex should, if [illegible] employed, in prefer- [illegible] sex, as where, in [illegible] protection, the body [illegible] matters, instru- [illegible] delicacy.

[illegible] those belong-

ing to the *Preventive service* will, for this purpose, be in general the most appropriate objects of choice.

Enactive. Instructional.

Art. 9. Where, of a man or body of men, belonging to the *stipendiary*, or say *professional* branch of the Defensive Force Establishment, the assistance is called in,—the Judge, or other Judiciary functionary, will, if time permits, transmit in writing to the commander, under whose immediate orders they are, an appropriate instrument, styled *a mandate in aid*. In this instrument, information will be given of the nature of the exigency, and of the temporary command so taken, of the man or men so impressed: this, with or without a mandate directing the commander himself to repair to the spot, and afford his assistance.

Enactive. Instructional.

Art. 10. On receipt of such instrument, or information to that effect, nothing but a well-grounded apprehension of preponderant evil, in some determinate and assigned shape, will justify non-compliance: of such apprehended evil, he will in this case forthwith give intimation, also in writing, stating the facts, by the consideration of which the apprehension has been produced.

Instructional.

Art. 11. Examples of grounds of such non-compliance, are as follow:—

1. Hostile aggression, in the quarter in question, from a foreign enemy, actual, or supposed imminent.

2. Peremptory order, from a superordinate, grounded, as supposed, on similar considerations.

Enactive. Instructional.

Art. 12. In case of non-compliance, if excuse be not given, the functionary by whom the mandate has been received will be responsible if given, so is he for the adequacy as well as verity of the excuse: and in this responsibility may be included eventual obligation to make compensation, at his own expense, for all damage thereby produced.

Enactive.

Art. 13. Not only to a Judge, but to any other Judiciary functionary, ministerial as well as magisterial, belongs the same function, with the power attached: he acting in the endeavour to give execution to the law, with or even without any special order, concomitant or antecedent from the Judge.

Enactive.

Art. 14. Need of the exercise of this function will still more frequently have place, without, than with, the cognizance of a Judge. This considered,—not only by a Judge, but by any other Judiciary functionary, ministerial as well

as magisterial, may the function, with the power attached, be exercised.

Enactive. Instructional.

ART. 15. *Help to the law!* is an appropriate formulary of invitation, by which notification may be given of the purpose for which this power is assumed and exercised: after these words will come, if not known to the party addressed, a statement made, as effectually as circumstances admit of the individual state of things, by which the need has been produced.

Instructional.

ART. 16. In certain cases, not only by a Judicial functionary but by any person of sound mind, may this function, and the power belonging to it, be exercised with preponderant benefit. But, to give particular description to these cases, and to obviate the abuse to which, in such miscellaneous hands, it cannot but stand exposed, belongs to the Penal and Civil Codes.

SECTION XIII.

Justice for the Helpless.

Instructional.

ART. 1. Expense, in a pecuniary, or what comes to the same thing in a quasi-pecuniary, shape, and in particular in the shape of consumption of time, is on every occasion, as on the one side of the suit, so on the other, indispensably necessary to the obtainment of judicial service: and, of this expense, more especially on the part of him in whose instance the disbursement is involuntary, evil is in a proportionable degree an inseparable accompaniment. In some instances, indeed, if no expense over and above what is necessary be employed, so small will be the amount of it, that except in so far as consumption of time imports loss of the means of subsistence, no exertion on the part of the legislator would be advantageously employed in the endeavour to exclude or compensate the expenditure: and thus small may perhaps be found the quantity of it in by far the greatest number of individual instances: and, so far, on his part the only care necessary will be, that of avoiding to cause or permit the natural and necessary expenditure to receive any factitious increase.

Instructional.

ART. 2. But, on the other hand, neither are cases wanting, in which no determinate limit can be set to the magnitude of the natural part of this evil. No limits are there, except those set by the earth's circumference, to the distance which may have place between the abode of a necessary witness, and the place at which his testimony may with greatest or exclusive propriety, or even by possibility, be delivered: scarcely are there any, even to the number of witnesses, whose testimony may eventually be found material: and, as it is with distance in place, so is it with the quantity of time and the quantity of money that may be necessary for the production of the evidence, or the quantity of money that may be necessary for compensation for loss of time on the part of the witnesses.

Instructional.

ART. 3. Such being, in this respect, the unquestionable state of things, one consequence is—that, without any relief other than such as comes to be afforded by the powers of the Public-Opinion Tribunal, the effect of every factitious addition to this natural evil is—to constitute a graduated system of depredation, and oppression in all other shapes: every rank, which stands superior in the scale of opulence, exercising, by this means, a tyrannical dominion over every other whose place is below it.

Instructional.

ART. 4. As to the evil, in so far as the expense necessary as above, to the support of a just demand or a just defence, is wanting,—it consists of every evil which man is exposed to, either by the want of the protection of the law, or, on failure of satisfactory legal defence, by the power of the law: by it, a correspondent portion, more or less considerable of the whole population of the country, is placed in a state of outlawry.

Instructional.

ART. 5. To provide for the exclusion of tyranny, thus exercisable by means of superiority of opulence, belongs to the Constitutional Code, with no less unquestionable necessity than to provide for the exclusion of the same unjustifiable and misery-producing dominion, when exercised by means of superiority of legal power.

Expositive. Instructional.

ART. 6. By relative indigence, understand inability to defray the above-mentioned expense. The evil attached to it as above, takes a different shape, according as it is on the *Pursuer's* side, or the *Defendant's* side, that the indigence has place. On the pursuer's side, the evil is different, according as the indigence is *original* or *incidental*: *original*, where the effect is to prevent a person who would have entered upon the career of judicial pursuit from doing so;—call this therefore moreover the *extra-judicial* evil: *incidental*, when, falling upon a person who is actually engaged in that career, it prevents him from continuing in it: call this the *judicial* evil: in this last case, to the suffering from the loss of right and remedy, is added the suffering from the impoverishment: especially if, as is so frequently the case, that same impoverishment had the expense of the suit for the sole or principal cause of it.

Instructional.

ART. 7. Of every such act of depredation or oppression thus exercised as above, the legis-

class, the principle, from which the arrangements proposed under this head, and those in Ch. xx. ELEEMOSYNARY ADVOCATES, and also in title *costs* Ch. xx. in the Procedure Code, are derived,—is now for the first time offered to universal notice. It is the same which, in Anno 1791, in the work on the Judicial Establishment, written and printed for the use of France, though not then published in England, gave birth to the just-mentioned proposed official situation, under the not altogether apposite appellation of *Defender General.**

Instructional.

ART. 31. In all hitherto established systems of Judicial warfare,—partly through negligence, partly by design, the relatively helpless have in the lump been left without defence: the relatively helpless, that is to say, everywhere the vast majority of the people; although in relation to Judicature, to leave a man without defence, is on the part of government to deny him justice.

Instructional.

ART. 32. Under these same systems, not only have those, who of themselves are destitute of the necessary means of supply for the natural expense of litiscontestation, been left unprovided with those means, but to that same natural expense, factitious expense has in various shapes, and in various degrees of enormity, been added.

Instructional.

ART. 33. Here then is injustice,—injustice in the shape of sinister partiality,—established by express law:—established upon an all-comprehensive scale: injustice to the many, to and for the benefit of the few.

Exemplificational.

ART. 34. In monarchies, pure and mixed, but most of all in the mixed monarchy of England, oppression in this shape is, manifestly and undeniably, the result of design and system. In the only Representative Democracy as yet fully established, in the Anglo-American United States,—in so far as it still has place, it is the mixed result of design and negligence: design on the part of the lawyer tribe; on the part of non-lawyers, design in some, namely, the richer classes; negligence and ignorance on the part of the rest.

Instructional.

ART. 35. The present proposed Code has, therefore, for its objects, not only the keeping excluded all such factitious expense, but also the providing means for defraying, on every occasion, as far as may be, the natural expense; after having done as much as the nature of the case is found to admit of towards minimizing it.

* See vol. iv. p. 354 *et seq.*

Enactive.

ART. 36. In every Justice Chamber, let there be kept in a conspicuous situation, accessible to the actors on the judicial theatre, an instrument of appropriate relief, namely, a receptacle provided for the receipt of voluntary contributions, and designated in conspicuous letters by the words, *Equal Justice Box.*

Instructional.

ART. 37. Additional means of productiveness to the Equal Justice Fund, are these:—I. Instructions from the Legislature to Judges. Instructions to give, in each individual case, (assigned reasons to the contrary excepted,) preference to pecuniary punishment, as compared with punishment in other shapes; saving the preference due to compensation, and satisfaction in other shapes, to individuals wronged. For rules and reasons see Penal Code, title *Remedies.*

Instructional.

ART. 38. II. Instructions in like manner to Government Advocates. Instructions to keep watch, in this point of view, over the conduct of litigants; and, as often as delinquency, in any one of the shapes here in question, presents itself as having had place, to call for punishment in this shape, exceptions as above excepted, at the hands of the judge.

SECTION XIV.

Publicity, Recordation, and Publication.

Instructional. Ratiocinative.

ART. 1. Special demand for secrecy excepted, and *that* never otherwise than temporary, (of which see the Penal, Civil, and Procedure Codes,) the leading principles of this constitution require, that, for the information of the several constituted authorities,—of every Judicial proceeding, as well while carrying on, as thenceforward, the publicity be maximized. In the darkness of secrecy, sinister interest and evil in every shape, have full swing. Only in proportion as publicity has place can any of the checks, applicable to judicial injustice, operate. Where there is no publicity there is no justice.

Instructional.

ART. 2. To the purpose of contemporaneous but evanescent publicity, serves the presence of the several actors on the Judicial Theatre, as enumerated in Section 2, and in particular that of the appointed Judicial visiters, as per Ch. xvii. JUDICIAL INSPECTORS.

Instructional.

ART. 3. For the purpose of subsequential and indefinitely permanent publicity, a system of registration, to be pursued on all occasions, under a pre-appointed set of heads, will be seen in Ch. xxi. IMMEDIATE AND APPELLATE REGIS-

TRARS, and more fully in the Procedure Code attached to the Penal and Civil Codes. As to the principle and the mechanical means, see Ch. viii. PRIME MINISTER, Section 10, *Registration System;* Section 11, *Publication System.* See also Ch. ix. MINISTERS COLLECTIVELY, Section 7, *Statistic Function.*

Instructional.

ART. 4. For the exclusion of evil in various shapes, exclusion of contemporaneous publicity will, on various occasions, be found necessary. But, in these cases, the light of publicity will be but covered up for a time: it will not be extinguished.

SECTION XV.

Secret intercourse obviated.

Enactive.

ART. 1. In no private missive, addressed to, or designed to be read, or heard, by a Judge, should any discourse be inserted, tending in any way to influence his conduct as a Judge, on the occasion, or for the purpose, of any individual suit or other application, instituted or contemplated.

Enactive.

ART. 2. Any missive, having for its design or tendency the exercising any such undue influence, the Judge will not fail to make known, at his next sitting, or at the time in Art. 6, herein-after mentioned.

Enactive.

ART. 3. If of such missive, the whole has such design or tendency, he will forthwith communicate it to the Registrar, that it may be read as above in open Judicatory, and the original kept with the Register Books: if only a part or parts, he will communicate to the Registrar every such part, and cause him to make entry of a copy of it.

Enactive.

ART. 4. If after having received any such missive, the Judge omits to give publicity to it, as above,—any person, by whom the same was written, or any person, by whom before or after its having been received by the Judge, it was seen, may upon his responsibility, appear in open Judicatory in the character of an *applicant,* and put questions to the Judge as to his having received it.

Enactive.

ART. 5. If, in any such missive, there be any portion of discourse, having for its design or tendency the influencing the conduct of the Judge as such, by hope of good, or fear of evil, at the hands of the writer, or any person on whose behalf he thus writes—the writer and every person privy to the intention of its being conveyed to the Judge, will be deemed to have thereby intended and endeavoured to practice corruption on the part of the Judge: and in the character of a conniver, the Judge, unless he makes the receipt of such missive known as above, will be deemed to have participated in the offence.

Enactive.

ART. 6. Periodically, to wit, on the first day of every week, the Judge, at the opening of the Judicatory, will make known every such undue address, as in the course of the preceding week, shall, as above, have been received: together with all such others as, although received, have, in any former week, whether by design or accident, failed to be made known; if no one such has been received, he will make declaration to that effect.

Enactive.

ART. 7. If, with any such design as that of wasting the time of the Judicatory, and thereby producing, to the damage of persons known or unknown, denial or delay of justice,—missives composed of, or containing impertinent matter, be addressed as above to the Judge,—every person, by whom or by whose procurement or instrumentality such missive was written or knowingly conveyed, will be responsible, compensationally, or punitionally, or in both ways, as the case may require, in the same manner as for a personal application having the same sinister purpose.

Enactive.

ART. 8. At the time of such periodical declaration as above, or earlier, the Judge, should any such undue address, as per Art. 6, have been made to him, by word of mouth, or *otherwise than in writing,* will, in like manner, make the same known, mentioning in each instance the individual addressing, together with all such others as are known, or believed by him to have been present, or otherwise, at the making of the address; and, in so far as the importance of the matter shall have warranted the time and labour necessary, he will be expected to have made a minute of the tenor or purport of the address at the time, or so soon after as convenience would admit.

SECTION XVI.

Partiality obviated.

Enactive.

ART. 1. If, in any Judicatory, Immediate or Appellate, a suit should arise, in which the Judge has a known and acknowledged interest, he will of course transfer the cognizance of it to a Depute, choosing some one, in the choice of whom the parties on both sides are agreed, if any such there be: if not, some Depute originally located by some preceding judge, in preference to any one originally located by himself. If it be in an Immediate Judica-

tory, the Judicatory it is transferred to, will, for minimization of delay, vexation, and expense, be some of the contiguous Judicatories. But by consent of all parties, the transference may be made to any Judicatory whatsoever. Should it happen that no Depute, not regarded as impartial, can be obtained, the suit will, on the petition of any party, be transferred to another Judge: if it be in an Immediate Judicatory, by the Judge Appellate; if it be in an Appellate Judicatory, by the Justice Minister.

Expositive. Instructional.

ART. 2. Partiality may, with reference to the person in question, be either favourable or otherwise: in every case it will have had for its internal cause, some interest: if favourable, a self-regarding or sympathetic interest; if adverse, an antipathetic interest. Of a partiality adverse to one side, the effect may be the same as a partiality in favour of the other. In any one of these cases, be the particular cause known or unknown, the existence of some such corruptive cause may, in some cases, be conclusively inferred from its effects.

Instructional.

ART. 3. On the conduct of the Judge the effect may be the same, or nearly the same, whether the seat of the interest be in the Judge's own breast, or in that of some other individual with whom he is connected by some special tie, whether of self-regarding or sympathetic interest,—for example, a wife, offspring, parent, or other near relation in the direct or collateral line, a patron, a protégé, or an intimate friend.

Enactive.

ART. 4. If, by exposure to the action of seductive interest in any shape as above, partiality is, by a party on either side of the suit, regarded as liable to have place in the situation of the Judge,—to such party belongs the power of putting to the Judge all apt questions by which the existence or non-existence of such exposure may be established: so also to every other party on both sides. As in an Immediate, so in an Appellate Judicatory.

Enactive.

ART. 5. On this occasion, the Judge removes from the judgment-seat to the seat appointed for that side in favour of which partiality is regarded as liable to have place: at the same time, for the deciding as to the existence of the exposure, the Government Advocate, the Eleemosynary Advocate, and the Registrar, place themselves on the judgment-seat, and constitute a Judicatory, a majority determining the decrees.

Enactive.

ART. 6. If the decision be in affirmance of the exposure, the Judicatory locates some other person for the cognizance of the suit, as per Art. 1, unless, trusting to eventual appeal, all parties concur in a petition that the suit may remain in the cognizance of the Judge notwithstanding: or,—in an Immediate Judicatory a party on one side applies to the Judge Appellate to transfer the cognizance of the suit to the judge of some other. Immediate Judicatory; in an Appellate he applies to the Justice Minister to transfer it to some other Appellate Judicatory.

Instructional.

ART. 7. If, to any such cause of partiality, his situation stands exposed as above,—the Judge will do well to consign, of his own accord, the suit to some Depute, on this special ground: stating at the same time the nature of the situation, and of the temptation to which it stands exposed: and this—whether the Depute be the object of his special choice, or one on whom the cognizance has devolved in virtue of some general rule.

Enactive. Instructional.

ART. 8. On the occasion of the examination of a Judge by a party as above,—whoever officiates as Judge, will have to consider and inquire whether it may not be productive of material delay, especially if, for counter-evidence to the declaration of the interrogated Judge, extraneous evidence be adduced or tendered; if so, he will thereupon take such measures as may be necessary to prevent predominant evil in consequence of such delay.

Enactive.

ART. 9. Rather than a suit should be heard and determined, though it were only in the first instance, by a Judge suspected of partiality,—if it be a Judge Immediate, the Appellate Judge will therefore, on petition from a party on either side, transfer the cognizance to some other Immediate Judicatory: choosing, by preference, one, if such there be, which all parties concur in preferring; and employing, on the occasion, the facilities afforded, as per Section 7, by intercommunity of judicial service: if it be a Judge Appellate, the Justice Minister, as above.

Enactive.

ART. 10. If, before the termination of an Appeal, the Judge appealed from is constituted Judge of the Appellate Judicatory, in such sort as that a decree could not be passed without his having to sit in judgment on his own acts,—cognizance of the Appeal will have place as follows:—

1. If it has been already assigned to a Depute of the Judge Appellate, it will remain with such Judge Depute.

Enactive.

ART. 11. 2. If not, it will be taken by the Judge Appellate Depute, if there be but one, or if there be more than one, by the senior in service.

Enactive.

Art. 12. 3. If there be no Judge Depute capable of serving, it will, on petition of any party, be transferred to another Appellate Judicatory, as per Art. 6.

Instructional.

Art. 13. If, to the action of any cause of partiality, the situation of a Judge Depute permanent, to whom a suit is about to be consigned, is recognised by him as standing exposed,—he will do well spontaneously to declare it, and on that account decline cognizance.

Enactive.

Art. 14. If, for the purpose of ascertaining the existence or non-existence of such exposure, questions, as per Art. 4, be put to him, the principal, or some other Depute, will take his place; and, unless, in consequence of the examination, the cognizance be remitted to him, hear and determine the suit in his stead.

Instructional.

Art. 15. To no considerable extent have these measures of prevention been applied in the established law of any State: their efficacy, if applied, accounts for this. The assumption always has been, that at a certain height in the scale of authority, the functionary is temptation and corruption proof.

Exemplificational.

Art. 16. In France, not only in the modern post-revolutionary, but in the ancient ante-revolutionary Codes, a Judge whose situation is not in the highest grade, is declared liable to be *pris à partie*, as the phrase is—presented on the ground of his having conducted himself as a party in the suit. But on the part of a Judge in the highest grade, all such injustice is tacitly assumed to be impossible. The greater the facility of transgression, the less the probability: such is the logic of this assumption.

Instructional. Exemplificational.

Art. 17. Under the English system, on the part of certain inferior grades, the capacity of transgressing is admitted, and thence exposure to eventual punishment is in form established. But the supreme grades, in which no such capacity is admitted, but impeccability assumed, are abundant.

Examples—

1. House of Lords Judicatory: members not punishable, but by a majority of their own body: the consequence is, the majority are unpunishable.

2. So in the House of Commons.

3. The Judges of the Westminster Hall Judicatories, next below the House of Lords.

Of these, though declared punishable, none *can* be punished but by the Commons, with the concurrence of the King and the Lords. Thus, then, though in form they are declared to be peccable, they are in effect still more assuredly unpunishable.

As to any question relating to exposure to seductive and corruptive influence on the part of any public functionary, nothing could be more shockingly indecorous: the blood would boil at the bare mention of it. Justice has its use and value in some cases, and at the charge of the lower orders, it should be executed with inflexible strictness. But when opposed to decorum and dignity, it shrinks into insignificance.

4. Applied to the inferior situation of Justice of the Peace, considered as such, the objection of indecorum and indignity applies not with such force. It is not, however, but in a case peculiarly flagrant, nor then, but with extreme reluctance, that in case of a complaint of any injustice exercised by them, the sort of redress, such as it is, is administered by the Court of King's Bench. Nor can any such complaint be made, but at an expense which not one, out of some hundreds exposed to the injustice, are able to defray.

Section XVII.

Migration.

Instructional. Ratiocinative.

Art. 1. The *judicial migration system* has for its object or end in view, the obviating the danger of misconduct, in respect of any of the ends of justice on the part of a *judicial functionary*, in consequence of connexions formed by him in the way of self-regarding interest; or affections contracted in the way of sympathy or antipathy from length of inter-communication in the territory in which he is judge.

Instructional. Ratiocinative.

Art. 2. It applies in a more particular manner to the situation of *Judge*, Appellate as well as Immediate. But it includes moreover, the several situations of *Government Advocate*, and *Eleemosynary Advocate*, in both grades, principally in consideration of the influence which, by their conduct, may be exercised on that of the Judge.

Enactive.

Art. 3. Under this system, in no Judicatory will any Judge remain, or say be *commorant* more than three solar years, with the addition of a fraction of another. The *Immediate Judge* will migrate from *sub-district* to *sub-district*: the *Appellate* from *district* to *district*.

Expositive.

Art. 4. Such migration will be either *stated* or *incidental*. The *stated* migration is that which takes place on a certain day of every year. This day is styled the stated *periodical* or *annual* judicial-migration-day; an *incidental* migration, is that which, being produced by some intervening cause, has place on any

other day of the year: the period of time of which such day is the first day, and the last day of that same solar year, the last day constitutes the fragment which, in such case, will be added to the three solar years to constitute the *commoration* time of the Judge in that judicatory.

Enactive. Expositive.

ART. 5. Justice Minister's *Migration-directive function.* In the exercise of this function, the Justice Minister gives directions to the course taken by the *Migration System* in its application to all the several functionaries comprised in it at all times: by such direction, transference is made of the several functionaries from one Judicatory to another, and their migration thus effected.

Expositive.

ART. 6. The *stated* migration day, which, as applying to all the several functionaries, may be termed also the *general* migration day, is the first day of every solar year.

Enactive.

ART. 7. Of *incidental* transference and migration, causes (on specific grounds in each case assigned) may be the following:—

1. Representation from the Prime Minister.
2. Representation from any sub-legislature.
3. Petition by any Judgeable of the Judge in question.
4. Petition from any other Magisterial functionary belonging to the same Judicatory.
5. In the case of a Judge Immediate, representation from his Judge Appellate.
6. In the case of a Judge Appellate, petition from any one of his Judge Immediates.
7. Petition from the Judge himself in case of his desiring to be transferred.

Enactive.

ART. 8. Every such representation and petition will be on grounds assigned, of which mention will be made in the *instrument of transference:* to wit, the mandate by which the migration is directed: the Judge having liberty and opportunity to contest the transference.

Enactive. Expositive.

ART. 9. *Migration Mandate.* This is the denomination given to the instrument of transference, by which the Judicatory to which the Judge to whom it is addressed, is to migrate, is declared. In it, the ground of the transference in the mind of the Minister—the considerations whereby he has been disposed to accede to the request, are also declared. In the first instance, it will only be provisional: liberty and sufficient time for contestation will be allowed to the Judge.

Instructional.

ART. 10. In pursuance of the object of this system, as per Art. 1, it will be among the cares of the Justice Minister, that, on the occasion of each migration between the territory from which, and the territory to which, a Judge is transferred, there be, in so far as the system of territorial division permits, one such territory at least intervening: in the case of the Immediate Judge one sub-district: in the case of the Appellate Judge one district.

Instructional.

ART. 11. On the other hand, for obviating needless delay, vexation, and expense, on the occasion of the removal, he will avoid giving unnecessary increase to evil in those several shapes, by any needless magnitude of distance between the territory from which, and the territory to which, the migration is made to take place.

Expositive. Instructional.

ART. 12. In the case of a functionary transferred as above for the first time, his *commoration time* will of course be reckoned from the day of his *location* in such his office: in the case of a functionary transferred for any other than the first time, it will be reckoned from the time of the last of his migrations, if more than one, or if not more than one, from that one.

Instructional.

ART. 13. In determining the length of *commoration*, which, upon the whole, it may be advisable to allow, and the distance which it may be advisable to require, between the place of a former and that of a subsequent commoration,—consideration, it is evident, will require to be had of magnitude, in respect of *territory, population*, and Judges' remuneration. The larger the territories in proportion to the density of the population, the less the danger from length of commoration, and the greater the inconvenience attendant on removals.

Instructional.

ART. 14. Among the checks meant to be applied to the conduct of every Judge, is that which may eventually be applied by the observation made thereof by his comrades in office—to wit, the Government Advocate, and the Eleemosynary Advocate, in conjunction with those other constant inspectors, provided in and by Ch. xvii. under the denomination of *Judicial Inspectors.* Lest, by a too long continued association, the efficiency of this check be impaired,—it will be among the cares of the Legislature so to order the migration that no Government Advocate or Eleemosynary Advocate shall, by commoration or transference, be located in the same Judicatory with the same Judge, for any greater length of time than the maximum of his commoration time, as per Art. 4.

Enactive. Instructional. Ratiocinative.

ART. 15. For carrying into effect this de-

sign with the greater convenience, the Justice Minister may assign to any number of Government Advocates and Eleemosynary Advocates, a shorter commoration than that, which, in Art. 4, is mentioned as the minimum. But on any such occasion, lest inferences unfavourable to the reputation of any of the persons concerned should be deduced, he may do well to cause to be determined by lot the places to which the transferences shall respectively be performed.

Enactive. Expositive.

Art. 16. *Annual Judicial Service Calendar.* This denomination is given to the instrument by which, in pursuance of the migration system, the Justice Minister makes declaration of the Judges, Government Advocates, and Eleemosynary Advocates, who, in the several Judicatories, Immediate and Appellate, will have to serve during the coming solar year.

Enactive. Instructional.

Art. 17. [ ] days antecedent to the general and annual migration day of the ensuing solar year,—the Justice Minister will cause an exemplar of the judicial service Calendar for that year, to be transmitted in print to each of the several judicatories, Immediate and Appellate; in such sort that, in that judicatory, which is the most distant from the seat of Government, it shall have been received. [ ] days before the day on which, in and for that same judicatory, the migration journey is to take place.

Enactive.

Art. 18. In every such annual judicial service Calendar, appropriate matter will be entered under the heads following:—

1. Name of the *territory* of the judicatory: of the *sub-district* in the case of an Immediate Judicatory: of the *district*, in the case of an Appellate Judicatory.
2. Names of the several Judges, Government Advocates and Eleemosynary Advocates, serving for the ensuing solar year.
3. Mention made, whether by commoration or migration.
4. Year, month, and day of the commencement of their respective commoration terms, in that judicatory.
5. Days on which migrations are expected to commence.
6. In case of migration,—judicial territories and judicatories to which the migration is to be made.
7. Days on which they are expected to have arrived at those several judicatories.

Enactive. Instructional.

Art. 19. Mode of determining the migration after the commoration has expired. In such number of instances as he thinks fit, the Justice Minister will, by his own choice, determine into what other territories each functionary, whose commoration term in the situation occupied by him, has expired, shall be transferred and migrate: in such other instances, if any, as he thinks fit, he may cause such determination to be made by lot: for which purpose, he will cause an appropriate lottery to be drawn, on some such day as may afford time enough for the transmission of the annual service Calendar, as per Art. 17.

Enactive. Instructional.

Art. 20. At all times, antecedent to such day of transmission, as per Art. 17, an application, containing reasons in writing or print, for or against the transference or non-transference of any such functionary, to the judicatory, and the situation, therein mentioned, may be transmitted by any person or persons to, and received by, the Justice Minister. Such application will be either a *transference-proposing*, a *transference-supporting*, or a *transference-opposing* application. But, of every such application, adequate information must be contained in the aforesaid judicial Calendar, as in the case of a missive having for its object the influencing the decision of a judge, as per Section 15, *Secret intercourse obviated*, and Section 16, *Partiality obviated*.

Instructional.

Art. 21. Of the matter of the information contained in the Judicial Service Calendar, as above described, as much will be exhibited at a view (that is to say, on one side of the same sheet of paper) as can be so exhibited consistently with convenience in respect of legibility: the whole, if within that space, the whole can conveniently be contained. If not, the separation may be made,—either by separating from the matter which belongs to the Immediate Judicatories, the matter which belongs to the Appellate Judicatories, or by separating that which belongs to the grade of judicatories in one portion of the whole territory of the State, from that which belongs thereto, in this or that other portion of the whole territory of the State.

Enactive. Expositive.

Art. 22. *Incidental Location and Migration Report.* In this document is contained a statement of the instances in which, during a certain portion of time, in pursuance of mandates of transference, at times other than the General Migration day, migrations have taken place.

Enactive.

Art. 23. On the first day of each solar year, for the information of the Legislature and the public at large, the Justice Minister will cause to be exposed for sale, in print, exemplars of an Incidental Location and Migration Report, stating the incidental migrations which have taken place in the course of the last year.

Enactive.

ART. 24. In this document will be contained matter under the heads following:—

1. In alphabetical order, names of the sub-districts and districts *into* which, in the course of that same year, migrations have taken place.

2. Under the head of each such territory, names of the several judiciary magisterial functionaries, whether Judge, Government Advocate, or Eleemosynary Advocate so transferred.

3. Day on which, in virtue of the transference, the functionary's *commoration term* took its commencement.

4. Cause of the change of possession: whether it was by location for the first time that the new possessor came in, or by migration: if by migration, the territory *from* which the transference, and consequent migration, took place.

5. In case of transference, the *cause* of it: if a vacancy occasioned by death of the predecessor, mentioning the death: if by dislocation of the last occupant, mentioning him and the cause of the dislocation: if by transference and migration of the last occupant, mentioning the cause, or ground of the transference, as per Art. 7.

6. So likewise, the person or persons by whose application it was produced.

7. Also, the day on which such application was received.

8. Also, the grounds on which it was made.

9. The day on which the decree of the Justice Minister, on the subject of those grounds, was declared.

10. If it were without any such application that the transference was made, mention will be made of the considerations on which, in the mind of the Justice Minister, it was grounded.

Enactive.

ART. 25. In the Migration System the *Registrar* is not comprised.

Instructional. Ratiocinative.

ART. 26. 1. The reasons which apply to the situation of the Judge do not apply to the situation of the Registrar. The decision is in every case that of the judge only. The acts of the Registrar being subject to his direction, no decision of his is in any direct way, or to a certainty in any case, determined by the will of the Registrar.

2. It is of importance that the business of registration be, as far as conveniently may be, carried on in one uninterrupted stream, on one uniform plan, by one and the same locally experienced hand.

3. Unless by undue influence, a document of this sort is not liable to be vitiated by him to whose keeping it is consigned, otherwise than by some flagrant and never probable crime.

Instructional.

ART. 27. But, forasmuch as under favour of the talent acquired by experience, an old established Registrar might possibly be capable of exercising with sinister effect an influence on the decisions of a succession of judges,—it might perhaps be advisable that the power of transference for specially alleged cause, should, in the case of this situation, also be given to the Justice Minister. A power to this effect would not be likely to be frequently called into exercise; still less to be abused: the bare apprehension of it would be sufficient to secure the effect desired.

Instructional.

ART. 28. In the several cases of the *Government Advocate* and the *Eleemosynary Advocate*, —forasmuch as, scarcely on any occasion will the decision of the Judge depend directly and purely upon any act of either of these functionaries, migration is accordingly in their several situations also of less importance than in that of the Judge. As to any sinister connexion between him and them, or either of them, it might perhaps therefore be sufficiently obviated by *his* migration alone, *they* respectively continuing stationary in the same judicatory for a longer *commoration* time, or even during life.

Instructional.

ART. 29. As the system of *stated* migration cannot, if adopted, take effect till at least three years after the institution of a judicial establishment upon any such plan as that here proposed, there will necessarily be that time at least for the making of the preparatory arrangements. But if, even though not determined upon, it were contemplated—it might be proper, in each instrument of location, to make mention of it as capable of being put in force and acted upon.

Instructional.

ART. 30. As to *incidental transference*, the utility of it will stand upon its own grounds, whatsoever be the determination in regard to stated migration.

Instructional.

ART. 31. All this while, an inconvenience inseparable from the migration system—nor that an inconsiderable one—is that which will, to a certain extent, be necessitated by the concomitant transference of one and the same suit from one Judge to another. The evil consequence, is—that to the succeeding Judge any orally-delivered evidence and arguments that had been presented, in that immediate way and best shape to his predecessor, cannot, without dilatory and expensive repetition, be presented in that same best shape, along with those presented in that same way to himself.

Instructional.

ART. 32. But, if ever so considerable, never can it constitute a ground of objection in the

mouth of any partisan of any as yet existing judicial establishment, and correspondent system of judicial procedure: under no such system, does the lessening of it appear to have in any instance been in any degree an object of endeavour or so much as desire.

Instructional.

Art. 33. On the other hand, in the here proposed judiciary system, and the Procedure Code connected with it, provision is, in divers ways, made for the minimization of this same inconvenience.

Instructional.

Art. 34. By the all-pervading practice of minuting down, as per Section 14, all the evidence which, in an oral form, ever comes to the ears of a judge, together with the arguments in so far as shall be thought material; and this in a mode the expense of which is minimized, as per Ch. viii. Prime Minister, Section 10, *Registration system*,—all evidence delivered in a Judicatory is in the best shape possible delivered to the Judge that hears it, and to every succeeding Judge in the next best shape.

Instructional.

Art. 35. By the institution of Judge Deputes, as per Ch. xiv. xv., means are afforded for minimizing the number of the instances in which such transference will have to take place. In the case of every *stated* migration, the term having been long foreseen,—it will be among the cares of the migrating judge to avoid, as much as possible, the giving in his own person, commencement to suits, to which he is not in this same way likely to give termination. It will be an object with him to clear his hands, as far as may be, of all those to which he has given commencement, turning over fresh ones, as they occur, to his deputes.

Section XVIII.

Incidental Complaint-Book.

Expositive.

Art. 1. *Incidental* is the attribute given to the species of complaint in question, in contradistinction to any which would be of such a nature as to form the matter of an appeal: *i. e.* a complaint, calling for a decision opposite, in the whole or in part, to a decision pronounced by the judge appealed from.

Expositive. Instructional.

Art. 2. Examples are as follows:—

1. Vituperative language employed by a judge in speaking to, or of, a party, or an extraneous witness.

2. Menacing language, if expressed in terms of wrath, or giving intimation of an intention, actual or eventual, to subject the party to any infliction, other than that which the tenor of the law, and appropriate use made of the latitude allowed by the law to the discretion of the judge, admit of.

3. With perplexing and vexatious frequency, interrupting a party in the course of his pursuit or defence.

4. Forcibly putting a final period to the speech of a party, or his substitute or assistant, in the course of his pursuit or defence. Such speech not having in it, at the time of the interruption, matter irrelevant or in any other way improper.

5. Letting pass unrepressed, treatment injurious to a party or witness, in the above or any other ways, by a party, or a substitute or assistant (gratuitous or professional) to a party on either side of the suit, or by any functionary, magisterial or ministerial, attached to the Judicatory.

Ratiocinative.

Art. 3. For security to all persons, against incidental vexation by judges and other judicial functionaries,—in the exercise of their respective functions, or otherwise by means of the power attached to their respective situations,—and in particular while any proceeding in a Justice Chamber is carrying on,—for this cause it is, that the remedy afforded by the *Incidental Complaint-Book* is provided.

Enactive.

Art. 4. To the Registrar it belongs to provide, and keep at all times accessible to all persons, a separate and appropriate Register Book, thus denominated.

Enactive.

Art. 5. If, by a Judge in the exercise of his functions, or with reference, express or virtual, made thereto, any discourse be uttered, or any act done, whereby any individual regards himself or any other individual, or the whole community, or any class thereof, aggrieved or about to be aggrieved, it is the duty of the Registrar, at the instance of such individual, forthwith to make or cause make entry of the minute thereof, in the *Incidental Complaint-Book:* having special care, in so far as discourse is the subject of complaint, to set down the very words: accompanying it, in every case, with a statement made of all such states of things, discourses and other acts and events, information of which shall be necessary to a clear, correct, and complete conception of the true nature of the case.

Enactive.

Art. 6. Of every such Incidental Complaint-minute, if it be in an Immediate Judicatory, exemplars, written in the *manifold-mode*, as per Ch. viii. Prime Minister, Section 10, *Registration System*, will, on the responsibility of the Judge and the Registrar, be disposed of as follows:—

1. Transmitted to the Appellate Judge, one-

2. Transmitted to the Justice Minister, one.
3. Delivered to the Complainant, one.
4. Kept in the Registry, one.

Enactive.

ART. 7. If it be in an Appellate Judicatory—
1. Transmitted to the Justice Minister, one.
2. Delivered to the Complainant, one.
3. Kept in the Registry, one.

Enactive.

ART. 8. So, if, on the part of any other actor on the Judicial Theatre, as per Section 2, any such transgression having place, the Judge, on being apprized thereof, fails to administer adequate satisfaction to the party aggrieved: adding, if the case requires it, ulterior punishment, —in this case to the other exemplars disposed of, as per Art. 6, will be added one delivered to the alleged offender complained of. In every such wrong, which, after witnessing, he leaves unredressed, without having done what is in his power towards redressing it, the Judge is an accomplice.

Enactive.

ART. 9. Should the Registrar refuse, or wilfully delay, to make or cause make such entry, —in such case, rather than any such information, as above, should be suppressed, it belongs to any other actor on the Judicial Theatre, as per Section 2, to make such recordation of the matter in question, as he is able, taking, in testimony of the correctness of it, the signatures of any persons present.

Enactive.

ART. 10. Of every such entry made in the *Incidental Complaint-Book*, lection shall be forthwith made to the assembled audience, and inspection allowed to every person desiring to inspect it, for the purpose of ascertaining, and securing the correctness, clearness, and completeness of it. If thereupon, by any person, imperfection in respect of any of those qualities be imputed to it, such person may, on the spot, draw up, and tender to the Registrar, *a minute of amendment*, stating such alleged deficiency, together with such forms of words, as shall be deemed by him requisite for the appropriate supply, substitution, or defalcation. To this minute, the Registrar is thereupon bound to give authentication; to wit, either by his signature on the original or by a transcript entered in the *Incidental Complaint-Book.*

Instructional.

ART. 11. To any such minute, it rests with the writer, or any one else, to give publicity, in what form and to what extent he thinks fit: and the writer will do well, if it be an Immediate Judicatory, to cause deposit in the Appellate Judicatory, one exemplar, and transmit another to the Justice Minister; if it be in an Appellate Judicatory, an exemplar to the Justice Minister.

Enactive. Expositive.

ART. 12. Every person, who, for the purpose of eventual complaint, makes or causes make, any such minute, does so under his responsibility, satisfactional and punitional, as for wrongful mental vexation, should the complaint be deemed frivolous or false: especially should the falsehood be deemed to have been accompanied,—not with mere rashness, but with criminal consciousness: that is to say, the consciousness that the statement is, in the whole, or in any part, materially false.

Instructional.

ART. 13. *Instructions* explanatory of the design of, and connexion between, this and the four last preceding Sections: to wit, Sections 14, 15, 16, and 17: as also in some sort of Sections 28, 29, and 30, respecting location and dislocation.

On the part of a Judge, suppose inaptitude in any shape or degree, reference had to the several branches of appropriate aptitude,—the cause of it may have had place either before, or not till after, his location: to the exclusion of it, in the first case, apply the provision in Section 28, *Locable who*, (followed by those in Section 30, *Dislocable how:*) to the other case, those in Section 14, *Publicity, recordation, and publication*, and those in the present Section relating to the *Incidental Complaint-Book:* those in Section 14, applying to the whole series of operations intended to be performed by him in the ordinary course of his business; those in the present Section to casual and unintended occurrences.

Instructional.

ART. 14. Of these occurrences, the most important are those petty mental and verbal injuries, which, in that situation, love of power is so apt to indulge itself in; inflicting on those whom it sees subject to it, injuries which, though occasioned by the suit, have no particular connexion with the particular interests at stake upon the event of it. In the established system, transgressions of this sort have very generally been left unnoticed and unrepressed. Between the possessors of supreme power, and their principal instruments, in this Department, as in every other, there exists a natural community of sinister interest: according to his calculation, the superior cannot do too much to augment, he cannot do too little to diminish, the fear inspired by the instruments of his will: and, so long as his own authority remains unimpaired, his own pride is gratified by every gratification received by the pride of his subordinates.

Instructional.

ART. 15. From the same cause, the like wrongs, liable to be done by the several other actors on the judicial theatre to one another, have been left without special notice: so even

those to the Judge himself: to *determine* the power of the functionary on these occasions, would have been to *limit* it: and a natural assurance was, that in the obvious necessity of the case, he would never fail to behold a sufficient warrant for whatever exercise of his power should at any time prove necessary for guarding his operations against disturbance.

On the part of a public functionary or other trustee, during his continuance in such his trust, corruption may be produced, either by intercourse between the corruptee and a corruptor, or by the mere force of some corruptee's situation, without any such intercourse; the corruptee's situation being such, as without assistance from any external application, naturally inclines him, in this or that way, to violate his trust. To the case first mentioned, applies Section 15, *Secret intercourse obviated:* to the other, Section 16, *Partiality obviated.*

Instructional. Ratiocinative.

Art. 16. By the corruption which requires intercourse, the utmost effect produced and consequently the utmost mischief, is as nothing, compared with that which it produces by mere situation, without the need of intercourse. In an absolute Monarchy, all other functionaries are, by force of the two correlative situations—by the dependence of their situations on that of the Monarch's—kept in a constant state of corruption—ready instruments of wrong in every shape in his hands. In a limited Monarchy, those trustees, by whose location the limits, such as they are, are set to the power of the Monarch, will always be for the most part in the same state: the expectation of the good, which, in such variety of shape, they are capable of receiving at his hands, sufficing for this purpose, without the apprehension of evil in any shape, other than that in which it is produced by the subtraction of the good. Thus it is, that in every Monarchy, the office of *Corruptor-General* is attached to the situation of Monarch: that of *Sub-corruptor*, to every known *instrument* of his, and every known *favourite;* and, forasmuch as, to the reaping the fruit of the corruption, no act on the part of a corruptor is in any such situation necessary, every such corruptor may, if he but act with common discretion, enjoy the full benefit of the corruption, without suffering any of the odium which, were the corruption observed, would be attached to it. In company with this benefit, he may, at the same time, and without difficulty, give himself at the hands of the unreflecting and deluded multitude, the praise of *purity.*

Instructional.

Art. 17. Bribery is corruption by intercourse; and the monarch who, while asleep on the throne, by the mere act of sitting on it, keeps in a state of continual corruption and mischievous obsequiousness, both the self-styled trustees of the people, by whom his power is supposed to be limited, and their electors, who in their small number, occupy the place of the whole people,—joins, with exemplary readiness, in heaping punishment and infamy upon the odious and needless, and comparatively innoxious crime of bribery.

Section XIX.

Judges' Contested-Interpretation-Reporting Function.

Expositive. Ratiocinative.

Art. 1. This function has for its object the keeping the rule of action, and the decisions thereupon grounded, in all times, in so far as intended by the legislator, the same in all judicatories, and thence as to all persons: or say, for shortness, securing *uniformity of decision:* and moreover *improvement:* to wit, as well in *matter*, that is to say, as to subserviency to the end, as in *form*, that is to say, as to clearness, correctness, and comprehensiveness of expression.

To this end it is provided as follows:—

Enactive. Expositive.

Art. 2. On the occasion of an Appeal, to wit, from an Immediate to the appropriate Appellate Judicatory, in so far as it rests on the ground of *law*, in contradistinction to *fact*, an interpretation, different from that put by the Judge, will, by the Appellant have been put upon some word or assemblage of words, contained in some article or articles of the Code. This being the case, the Judge will, in penning his *opinative* decree, call upon the Appellant to deliver to him a *paper*, containing the words of the opinative decree he, the Appellant, contends for, together with the article or articles on which he grounds his demand, that such words shall therein be employed. To this form of words the Judge will give the appellation of *The Appellant's Interpretation paper:* and at the same time to any such form of words, as by himself is regarded as being, though different from, yet equivalent to, and correctly explanatory of, the words in question as they stand in the Code, he will give the appellation of the *Judge's Interpretation paper.*

Enactive. Instructional.

Art. 3. In so doing, he will, to the best of his endeavours, render his assistance to the Appellant, in giving expression to his meaning to the best advantage, proposing, upon occasion, for the appellant's choice any such other terms, as to him, the said Judge, shall appear more apposite; that is to say, any such terms as, in his opinion, appear to afford a better warrant for such decrees, opinative and imperative, as the Appellant demands, than those so proposed for the said purpose by the Appellant.

Enactive. Expositive.

Art. 4. On this same occasion, if to the Judge it appears that, by no alteration that

occurs to him, could the intention expressed on that occasion in the Code, be either rendered more clear, or the matter of the Code improved,—he will transmit to the superordinate authorities, along with the record, his opinion to that effect, in and by the words *no alteration needful or useful*. A *Judge's Amendment-negativing-paper* will, in that case, be the appellation of the paper containing those same words; *Contested-interpretation-reporting function*, that of the function thereby exercised. If, on the contrary, it appears to him, that for either of the above purposes, an alteration would be of use, he will, in case of simple *defalcation*, with the words in question, add the word *dele;* in case of *addition*, the words proposed to be added, with a designation of the place where; in case of *substitution*, the words proposed to be inserted, with a designation of the place where, accompanied by a copy of the words proposed to be *defalcated*, or say *eliminated*. A *Judge's Amendment-proposing-paper* will be the appellation in this case: *Eventually-emendative function*, that of the function exercised. As to this matter, see Ch. vi. LEGISLATURE, Section 29, *Members' Motions*.

Enactive.

ART. 5. If, on the occasion in question, the Appellant has the assistance of a *Professional Lawyer*, as per Ch. xxiii., there will be the less need of any such anxiety, as per Art. 3, on the part of the Judge. If, for want of appropriate knowledge, judgment, or active aptitude, the Appellant appears to be not sufficiently qualified to do justice to his own cause, and at the same time not unable to bear the expense of professional assistance, the Judge will, if he sees reason, advise the procuring such assistance: if in his view, through want of pecuniary means, such inability has place, he will call in the assistance of the Eleemosynary Advocate, as per Ch. xx.; or the *Eleemosynary Advocate* may in such case, of his own accord, interpose and proffer his assistance.

Enactive.

ART. 6. The two concomitant and opposite interpretations being thus drawn up, the *Registrar* will cause the Appellant to authenticate *his* interpretation by his signature; in case of refusal, mention thereof will be entered.

Enactive.

ART. 7. Concurrence in this way in the authentication of an *Appellant's Interpretation paper*, as above, will be among the conditions without which, no Appeal on the ground of law will, by the Registrar of the Immediate Judicatory, be transmitted to the Appellate Judicatory.

Enactive. Expositive.

ART. 8. *Contested Interpretation Report.* Of every case, in which any such pair of opposite interpretations has place, the Registrar, under the direction of the Judge, will draw up a report, termed the *Contested Interpretation Report*.

Enactive. Instructional.

ART. 9. In each such Report, the number of the thus conflicting interpretations will ordinarily be no more than two: namely, that of the Judge, and that of the Appellant. But, what may happen, is that, on the same word or words, by divers Appellants, interpretations will have been put different from one another, as well as from that of the Judge. In this case, each such Appellant will be called upon, and allowed to give in, his *Interpretation-paper*, which will accordingly be included in the Report.

Enactive.

ART. 10. Of a *Contested Interpretation Report*, exemplars will be thus disposed of:—

1. Transmitted to the Appellate Judicatory, one.
2. Transmitted to the Justice Minister, one.
3. Transmitted to the Legislation Minister, one.
4. Kept in the Registry of the Immediate Judicatory, one.
5. Delivered to each Appellant or set of Appellants, joining in the same *Interpretation paper*, one.
6. Delivered to the party or parties Respondent, one.
7. Kept by the Judge, in his individual capacity, one.

Enactive.

ART. 11. When, upon cognizance taken by him of the Appeal, the conflicting interpretations come to be decided upon by the Appellate Judge, he will, by his signature, adopt and give his sanction to such of them, if any, as in his opinion is the proper one; or, as per Art. 2, add an *Interpretation paper* of his own; or, as per Art. 4, an *Amendment-negativing* paper. The instrument in and by which these same matters are communicated, will be termed *The Judge Appellate's Contested Interpretation Report*.

Enactive.

ART. 12. Every such Judge Appellate's *Contested Interpretation Report*, will be drawn up by the Registrar of the Appellate Judicatory, under the direction of the Judge, and exemplars of it be disposed of as follows:—

1. Transmitted to the Justice Minister, one.
2. Transmitted to the Legislation Minister, one.
3. Retro-transmitted to the Immediate Judicatory, one.
4. Kept in the Registry of the Appellate Judicatory, one.
5. Transmitted to the party or parties Appellant, one or more, as per Art. 10.
6. Transmitted to the party or parties Respondent, one.

7. Kept by the Judge Appellate for his own use, one.

Enactive.

Art. 13. *Justice Minister's Contested Interpretation Report.* In the same manner the Justice Minister will frame and transmit his *Contested Interpretation Report* to the Legislation Minister, for the use of the Legislature.

Enactive. Ratiocinative.

Art. 14. That, in the progress of the above Reports from the Immediate Registry to the Legislature, no unnecessary delay may have place, the Registrar will, at each office, be careful to set down upon his Register, as well as upon the face of each Report respectively, the day on which it was received at his office, and the day on which it was therefrom transmitted.

Enactive.

Art. 15. *Contested Interpretation Committee.* For the consideration of all such *Contested Interpretation Reports*, as shall, as above, have been received by the Legislation Minister,—the Legislature will have provided, and kept in constant exercise, a standing committee, under the appellation of *The Contested Interpretation Committee.*

Enactive.

Art. 16. At the end of [ ] days after receipt of a *Justice Minister's Contested Interpretation Report* by the said committee, (if within that time no motion has therein been made for the taking such Report into consideration,) the interpretation, if any, which has been sanctioned or proposed by the Justice Minister, shall be considered as adopted by the Legislature, and corresponding amendment, directive or re-editive, as the case may appear to require, be, by the Legislation Minister, (subject to direction by the Legislature and the Contested Interpretation Committee,) applied to the part or parts in question of the Pannomion, as per Ch. xi. Ministers severally, Section 2, *Legislation Minister.*

Enactive. Expositive.

Art. 17. *Justice Minister's Annual Interpretation Diversity Table and Report.* On the view taken by him of the several Contested Interpretation Reports, it will be among the cares of the Justice Minister to take special note of all instances, if any, in which, upon one and the same word or passage, in any article of the Pannomion, different interpretations have been put, in different Judicatories, Immediate or Appellate; and from them, on the last day of every year, or oftener, he will transmit to the Legislation Minister an aggregate Report, styled the *Justice Minister's Annual Interpretation Diversity Report:* in which, in a tabular form, all those several instances of diversity stand expressed.

Enactive. Instructional.

Art. 18. In each of two suits having place between different parties on different grounds, and having no communication with one another,—it may happen that of the same word or passage, interpretation has been given, and that, as in the case of the same suit, as per Art. 17, the two proposed Amendments have been different from each other and conflicting.

Of these cases, at the end of his said *Annual Interpretation Diversity Report*, the Justice Minister will subjoin a separate *Table* wherein the several words or passages which, in the course of the year, have been respectively, as above, the subject of conflicting amendments, on the occasion of different suits, will be exhibited, with the conflicting amendments respectively applying to them: mention will therein be made of the several functionaries, himself included, by whom they are respectively proposed; in each instance, any such remarks as he may see reason to make, being subjoined.

Enactive.

Art. 19. Of every amendment thus adopted, the effect will by the Judge be confined to such suits, as shall thereafter be instituted: retroactive effect, none.

Section XX.

Judges' Eventually-emendative Function.

Expositive.

Art. 1. In Ch. xi. Ministers severally, Section 2, *Legislation Minister*, Art. 20 to 24, mention has been made of the *conditions* on which, and the *mode* in which, by the tacit consent of the Legislature, an amendment, proposed by a Judge Immediate, will, as if proposed by a Member of the Legislature, and adopted, receive the force of law, and be aggregated to the body of the laws. So also, in Section 19, *Contested-interpretation-reporting function* has been delineated, the mode in which adoption may be given to any interpretation proposed by a Judge for any portion of the text of the law; that is to say, for an amendment in respect of form, to be applied to it: the intended matter, or say import of it, remaining thereby unchanged.

Mutatis mutandis, as below, in like manner is provision hereby made for amendments originating in the judicial authority, in respect of matter.

Enactive.

Art. 2. Here follows the *mode of bringing forward the proposed amendment.* When, in any part of the law, the need of amendment presents itself, on the occasion of a suit brought before him, to any such judge, as having place, —he draws up, according to one or other of the forms mentioned in Ch. xi. Section 2: to

wit, the *directive*, or the *re-editive*—the amendment, which to him seems most suitable. In open Judicatory, the Government Advocate, and the Eleemosynary Advocate being present, he thereupon consults them, by reading, or causing to be read to them, the tenor of such his amendment, with his reasons annexed: and calls upon them respectively to mark on the paper one or other of the several responses signified by the words *Approved*, *Acquiesced in*, or *Disapproved;* giving to each of them, if desired, any such *consideration time*, as, upon their application respectively, he shall have deemed requisite.

Enactive.

ART. 3. *Transmission of the proposed amendment to the superordinate authorities.* At the end of such *consideration-time*, the judge Immediate transmits to his several superordinates, to wit, the Judge Appellate of his district, and the Justice Minister, exemplars of a Report, under his signature, containing the proposed amendment: on each such exemplar is marked under his signature the response of the *Government Advocate* as above, or else a declaration of the invitation given, and time allowed to him, or in his absence to the senior in office of his Deputes permanent, and the lapse of the time without response received; and so in the case of the *Eleemosynary Advocate.*

Enactive.

ART. 4. Of such proposed amendment, with the responses,—or declaration of non-response as above,—constituting an *Emendation-suggesting Report*, exemplars will thereupon be thus disposed of:—

1. Transmitted to the Appellate Judicatory, one, with the day when sent marked on it.
2. Transmitted to the Justice Minister, with the like mark, one.
3. Transmitted to the Legislation Minister, with the like mark, one.
4. Kept in the Registry, one.
5. Kept by the Judge for his own use, one.

Enactive.

ART. 5. Mode of bringing forward the amendment, by the instrumentality of an individual special applicant.—The individual having taken note of the article or articles, which to him appear as standing in need of amendment, and being desirous to procure, by the authority of the Judge Immediate, under the eyes of his superordinates, the adoption of such amendment accordingly,—he frames his proposed amendment, employing either the directive, or the re-editive mode, as per Ch. xi. MINISTERS SEVERALLY, Section 2, *Legislation Minister.* This proposed amendment, the judge, after hearing what he thinks fit to hear from the mouth of the proposer in support of it, either rejects simply, or adopts simply, or adopts with any such *super-amendment*, subtractive, additive, or substitutive, as to him seems proper. The result becomes the proposition of him, the said Judge Immediate, and is dealt with, as above, per Arts. 2, 3, 4.

Enactive.

ART. 6. On receipt of his exemplar, the Registrar of the Appellate Judicatory marks on it the day when received. Describing it by the designation of the article or articles to which it applies, he sends notice to the Justice Minister of the reception given to it by the Judge Appellate, as signified by the words *Approved*, *Acquiesced in*, or *Disapproved:* which words are expected to be written by the hand of the Judge. So likewise another such notice to the Legislation Minister. If within *consideration time*, as per Art. 2, and Ch. xi. Section 2, Art. 53, no such notice to the contrary has been received by the Legislation Minister, the amendment is considered as acquiesced in by the Judge Appellate and Justice Minister respectively.

Enactive.

ART. 7. In like manner, the Justice Minister, after receipt of his exemplar, causes notice to be given to the Legislation Minister.

Enactive.

ART. 8. If, within *consideration time*, as per Art. 2, notice of disapproval has been received by the Legislation Minister, from either the Judge Appellate or the Justice Minister, rejection is the consequence: if from neither, adoption.

Enactive.

ART. 9. So, if, within such *consideration time*, a motion for the taking the amendment into consideration has been made by a member of the Legislature, and by another seconded, the aggregation of it to the body of the laws remains suspended, until the result of such motion has been determined.

Enactive. Instructional.

ART. 10. When an extraneous amendment is thus submitted to the Judge, it matters not whether the applicant has or has not a particular interest in its adoption.

Enactive. Instructional. Ratiocinative.

ART. 11. Nor yet whether any explanations given on the occasion be true in fact. Not but that, for the purpose of giving additional clearness to the conception conveyed by him of the nature of the demand for the amendment, the applicant may, on his responsibility in case of falsehood, state the details of any individual case, in which he himself, or any other party, has a particular interest. But, as to the adoption or rejection of the thus proposed amendment, the Judge need not regard himself as bound by any opinions formed by him respecting the truth of any such statements: for, only to the *species* of the case, not

to any *individual fact*, separately considered, will any such amendment apply itself: accordingly, not being considered as constituting evidence, the matter of such statement need not (unless the Judge thinks fit) be entered on the record.

Enactive.

Art. 12. If, however, his adoption of the proposed amendment depends in any degree on the truth of any allegation of the proposer's, in relation to any matter of fact, such allegation will be considered as evidence; and, for ensuring the verity of it, the same securities will apply as in the case of a piece of evidence delivered on the occasion of a suit.

Enactive.

Art. 13. To an amendment proposed, as above, by an individual applicant, his name will be attached, of course, unless the contrary be his desire.

Enactive.

Art. 14. An amendment proposed by a Judge Depute, permanent or occasional, will not be transmitted, without the approval or acquiescence of the Judge Principal, as attested by his signature.

Enactive. Ratiocinative.

Art. 15. Only for some alleged oversight in the wording, in consequence of which the words employed fail, it is supposed, of being expressive either of the desire actually entertained by the legislature, or of the desire which it is believed would have been thereby entertained, if the circumstances mentioned as forming the ground of a justificative cause of the demand for the amendment had been respectively present to its mind,—only for amendments of this description is it expected that any such proposition, if made, will be received by the Judge. For if it be in respect of the design and policy of the law that a change presents itself as beneficial, an appropriate authority more competent to the reception of the supposed amendment, is the Legislature.

Enactive. Ratiocinative.

Art. 16. In the event of its being deemed frivolous by the Judge Immediate, to whom it is submitted, lest by accident or design the disposable time of the Judicatory should be occupied in waste, and, with or without design, denial or considerable delay of justice be produced, every person whose signature is attached to such proposed amendment is responsible for it, satisfactionally or punitionally, or in both ways, as the case may require, in like manner as for a frivolous and vexatious suit, as per *Procedure Code.*

Instructional.

Art. 17. If, at any time, in any Judicatory or Judicatories, such extraneous proposed amendments should increase in number, in such sort as to occupy a greater portion of the time of Judges than can be conveniently allotted for this collateral purpose, it will be among the cares of the Legislature to repress the excess by annexation of such conditions as shall be deemed apposite: requiring, for example, on every occasion, in addition to the applicant, responsible law practitioners at his choice, in number proportioned to the exigency of the case.

Instructional.

Art. 18. In the exercise of this same eventually emendative function, the Judge will have in consideration the *local extent* which it appears to him proper to be given to any regulation on that occasion proposed by him: observing whether the circumstances, by which the demand for it is constituted, are peculiar to his own territory, common to all the judicial territories of the state, or peculiar to such or such other territory or territories; and these distinctions she will bring to view, in his *Melioration-suggesting*, or say *Emendation-suggesting Report.*

Instructional.

Art. 19. On this occasion, he will pay particular and separate attention to the field of *Procedure.*

Instructional.

Art. 20. To these same distinctions, reference will moreover be made by the Judge Appellate, in the Report made by him upon the Judge Immediate's *Emendation-suggesting*, or *Melioration-suggesting Reports.*

Instructional.

Art. 21. So likewise by the Justice Minister, in the Reports made by him thereupon to the Legislature.

Enactive. Instructional.

Art. 22. On the occasion of any such proposed amendments or new regulations on the subject of procedure, the Justice Minister will have special regard to the demand for uniformity, as in the case of contested interpretation, as per Section 19, *Contested-interpretation-reporting function:* to the end that, in the particulars in question, uniformity and diversiformity, according to the demand for these qualities respectively, may, in the several judicial territories of the state, be created and preserved.

Ratiocinative.

Art. 23. Objection. Supposing this function conferred, it will be in the power of a Justice Minister, without need of assistance, other than that of one Judge Immediate and one Judge Appellate, to go out of his proper sphere, and form a party in opposition to the Legislature, by bringing on the carpet this or that arrangement,—on this or that part of the field of law, on which the public mind is already tak-

ing, or may be brought to take an interest,—dangerous to public tranquillity: evil consequence, the community kept in a state of perpetual ferment.

Answer. The evil will work its own cure. To any annoyance from this source, it would remain in the power of the Legislature with every desirable facility, to put an end at any time. Measures of severity necessary, none. A simple determination not to take the matter in question, for a subject of discussion, would suffice: once expressed, it would without difficulty be renewed as often as the obnoxious proposition made its appearance. Sufficient for the production of this effect, would be the motion of one member, seconded by one other, and acceded to by a majority of the remainder. No impression could the supposed turbulent functionary—the Justice Minister—make on the legislative body, unless there were in that body, a party actuated by wishes to the same effect: and if there were, of no evil in this shape would the function thus conferred on the functionary in question, be productive: the case being that it would equally have place without him. His means of influence are not so great as those which belong to every member of the Legislature. To every member belong the rights of audition, argumentation, and motion, in the Assembly: to the Justice Minister, not one of those rights: and had he even every one of them, he would be little higher than upon a par with every other member of the Assembly.

Instructional. Ratiocinative. Expositive.

ART. 24. Examples of the topics which present themselves as being in a more particular manner liable to give birth to inconvenience in this shape, are as follows:—

1. Topics belonging to political economy. Instance, quantity and quality of encouragement and discouragement, absolute and comparative, proper to be applied to the several distinguishable branches of productive industry:—to be applied,—whether directly for that same purpose, or indirectly and unavoidably, on the occasion of taxation for the purpose of revenue.

2. Topics belonging to the relation of the state in question, to foreign states.

3. In the case of a federative Government, topics belonging to the relations between this or that state, and this or that other, or between this or that state, and the whole nation.

Instructional. Expositive.

ART. 25. Examples of topics, in relation to which, the allowance of such extraneous applications, affords the best promise of being conducive to the melioration of the body of the law, are as follows:—

1. Topics relative to the laws having for their object the affording security to the person, property, reputation, or condition in life of individuals.

2. Topics relative to the interpretation, authorization, and execution of contracts, as between individual and individual.

3. Topics relative to the interpretation, authorization, and effectuation of conveyances.

Enactive. Ratiocinative.

ART. 26. In case of emendation by appointment of punishment where as yet there is none, to wit, on the discovery of a maleficent quality as being possessed by an act of this or that description, not yet by prohibition aggregated to any class of offences,—apply not any retroactive punishment: do not apply pain, in the character of punishment, to any one, by whom such act of newly discovered maleficence, has been performed.

1. The only use of punishment is prevention of similar maleficent acts, (maleficence having place in this case by the supposition,) which otherwise would have been committed. But this good effect may as surely be accomplished by prohibition, *without* punishment, *i. e.* by the announcement of punishment as about to be inflicted, in the event of any repetition of the maleficent act, as by prohibition *with* punishment.

2. On the other hand; of the infliction of punishment without warning in any one such case, an effect liable to be produced is, the sense of insecurity, resulting from the breach of the general rule:—no punishment for any sort of act, to which, in the existing state of the law, punishment may not be seen to be already attached, the supposed maleficent act being already included under some denomination of offence.

Enactive.

ART. 27. But the inhibition as to the infliction of retroactive punishment, does not extend to the abstraction of the profit from the maleficent act.

Ratiocinative.

ART. 28. Correspondent to, and concomitant with, the profit to the maleficent agent from the maleficent act, will be loss, or say pain of privation, or suffering in some other shape, to some one else. The consequence is, that by forbearing to produce suffering on the part of the maleficent agent, suffering, and probably to a greater amount, would be produced on the part of some person, to whom no maleficence is so much as imputed: and thus by forbearance to produce on the part of the maleficent agent, the suffering attendant on the obligation to disgorge the profit, no net saving of suffering would be produced.

In so far as from the maleficent act in question, damage to an individual is produced, the provision thus made, for the extraction of the profit of the maleficent act, for the purpose of transferring such profit to the party wronged, is, in other words, a provision ordaining compensation to be *pro tanto* made: accordingly, in this case, for the reason just assigned, making of compensation ought to be ordained.

In a word, though in such a case application will not be to be made of the punitive remedy, yet application will be to be made of the satisfactive, and thence, in so far as the nature of the case admits, of the compensative remedy.

But moreover, in the case in which by the maleficent act in question, no loss or suffering in any shape had been produced on the part of the individual, (the maleficent act being of a purely public nature, as for instance, an act by which a defalcation from the mass of public property had been effected ;) still, even in this case, extraction should be made of the profit of the offence. For, in the first place, to the public at large, from the addition made from this source, to the aggregate of the public stock, the same benefit is produced as is produced by a profit to the same amount from any other source. But whatsoever may be the *danger* produced by this abstraction of profit, scarcely can any correspondent *alarm* be said to be concomitant with it. Where is the alarm that would be produced by the persuasion, though it were universally shared—shared by every man,—that in the event of his succeeding in the reaping of a profit, from a maleficent act, at the expense of the public, though he will not be subjected to any ulterior suffering, he will not be left in possession of any such undue profit! In a word, that though he will not be a loser by the mischief, which he will have done, yet, neither will he have been a gainer.

As to the application of the preventive and suppressive remedies, in this case, see Section 21, *Judges' Sistitive*, or say *Execution-staying function*.

Section XXI.

Judges' Sistitive, or say Execution-staying Function.

Expositive.

Art. 1. By the Judges' *execution-staying*, or say *sistitive* or *suspensive* function, understand the exercising, for special cause the function, by the exercise of which a stop, and eventually an end, is put to that execution and effect which he would otherwise hold himself bound to give to this or that provision of the Pannomion.

Expositive. Enactive.

Art. 2. Such special cause is, the observation made by him of something in the law, which, having appeared to him to be an imperfection, such as, in case of execution and effect thereto given, will be productive of injustice, and thence of contravention to the intentions of the legislature, has as such given exercise to his *Eventually-emendative function*, as per Section 20. In such case, it is not only allowable to him, but on his responsibility, rendered incumbent on him, to stay execution accordingly.

Enactive.

Art. 3. In this case, he will proceed thus. If, at the time when the supposed injustice has manifested itself to his eyes, the whole of the evidence which the individual case, as stated by the applicant, furnishes, has been elicited, he will issue, at the same time, three pair of decrees: each pair composed of an opinative, and the correspondent imperative decree, as per Section 9: one pair, for giving execution and effect to the law as it stands; a second, for giving execution and effect to the law as it will stand, if the amendment, which he thereupon proposes, is adopted; a third, for stopping the execution of both, until the will of the legislature shall have been made known. It is by the issuing of this last pair, that the Judges' *sistitive* function will have been exercised: of the two first mentioned, the one or the other follows, according to the decision of the legislature, as made known by the reception given to the *Emendation-suggesting Report*.

Enactive.

Art. 4. Conditions necessary on each occasion to warrant the exercise of this function are the following:—

1. That, from execution, if given, to the law, damage and injustice, which, but for such stoppage would not be excluded, would, in some of the therein assigned shapes, or probably might, ensue.

2. That, from the exercise so given to this function, no damage so great seems equally likely to ensue, as from the non-exercise of it.

3. That, of this same sistitive function, the exercise be accompanied by a corresponding exercise given to the *Eventually-emendative function*, in such sort that express reference of the case to the will of the legislature be made, as above.

Enactive.

Art. 5. In the tenor of the sistitive decree or mandate, the description of the time of its continuance may be in these words,—*unless and until*, on view of this order, the legislature shall have ordained otherwise.

Enactive.

Art. 6. Of every such pair of decrees, as per Art. 3, exemplars will accompany those of the corresponding *Emendation-suggesting Report*, as per Section 20, Art. 4.

Instructional.

Art. 7. On whatever occasion exercised, the earlier the stage at which in the course of the suit it is exercised, the better: for example, upon the bare view of the law, antecedently to any inquiry in the way of contestation, as to the question of fact.

Enactive.

Art. 8. If, at the time of the observation

made by the Judge, as above, the *elicitation* of the evidence has not been completed, he may in the ordinary course of procedure, to save vexation and expense, stop such process until, as above, the will of the Legislature shall have been made known.

Enactive.

ART. 9. If, however, by the result of the judicial examination of an applicant, or otherwise, it shall appear to him that evidence, material to the giving effect to the application (should the order of the Legislature require him to give effect to the law as it stands) would, by the delay in question, be in danger of being lost,—he will, at the instance of the applicant, continue the collection thereof until it shall have been completed: but, in this case, he will give warning to the applicant, that it is at the peril of costs of suit, and compensation for the delay and vexation, that what he so insists on will be done; and for securing eventual payment, he will, as upon occasions in the ordinary course, as per Procedure Code, take such arrangements as the nature of the case, and the situation and circumstances of parties may require.

Ratiocinative.

ART. 10. When, by exercise given to the Judges' sistitive function, execution, to a portion of law as it stands, has been, as above, refused, the effect of such refusal will be liable to be *retroactive:* disfulfilling thus an engagement, which (though, as supposed, through oversight) had been entered into by the law. Here then comes a dilemma. Giving execution and effect to the law as it stands, the Judge, by the supposition, renders himself, in his own conception, instrumental in the commission of an injustice: refusing so to do, he disfulfills an engagement entered into by the law, and thereby also commits an injustice: weakening, in a certain degree, it may be feared, the confidence reposed by the people in the general trustworthiness of the law. But, that which the people look to, at the hands of the Legislature and the Judiciary together is —the fulfilment of *salutary* ordinances, and no others: not the production of evil by admission or omission of this or that word in a law, through inadvertence or otherwise. What may, therefore, be reasonably looked for, is—that, by giving execution and effect to the imperfectly expressed portion of law in question, a severer shock would be given to the public confidence, than by forbearing so to do.

Instructional. Exemplificational.

ART. 11. Under this dilemma,—for minimization of the evil, the Judge will take such course as shall have been indicated by the circumstances of the individual case: examples are as follow:

1. Case I. A *penal* case. The law so inappositely penned, as to subject to punishment a medical practitioner, who, seeing a person attacked in the street by a disorder, to the cure of which immediate bleeding is necessary or contributory, has accordingly performed on him that operation. By an adversary, he is prosecuted under this law. By the Judge, execution of it (suppose) is refused. Now, by this refusal is produced a retroactive effect; and, in consequence, in the breast of the adversary, a pain of disappointment. Less, however, will be the evil composed of this pain, than the evil composed of the punishment, if inflicted on the practitioner, by whose intervention a life has been preserved; and by whose punishment the public mind would naturally be impressed with sympathy as towards the sufferer; antipathy, as towards all those concerned in the production of the suffering; and terror on each one's own account, and that of his friends, in respect of their exposure to the operation of laws so framed.

Instructional. Exemplificational.

ART. 12. 2. Case II. A *contract:* the contract, for example, between the Merchant and the Jew of Venice: fabulous, it will not be less explanatory than if real. Money lent: on failure of repayment by a certain day, power to creditor to cut from debtor's body a pound of flesh from any part, at creditor's choice. Regarding this contract as being of the number of those, by observance of which greater evil would be done than by the breach, the Judge proceeds, as above, transmitting proposed amendment, as per Section 20, and for suspension, issuing the three pair of decrees, as above, Art. 3. True it is, that of these suspension decrees, if confirmed by the Legislature, namely by tacit consent given to the proposed judiciary amendment, the effect will, as in Case I., be *retroactive.* But in this second case, the retroactivity is at the least not less irreproachable than in Case I.

Instructional.

ART. 13. By these means will, and by no other means can, the practice of *strained construction* in judicature, with its all-pervading and boundless evils, be eradicated. By that practice, in proportion as the prevalence of it is known, men's confidence in the effect of the law, and in the disposition of the judiciary, cannot but be proportionably weakened. To lawyers this is no evil, but a good: for by it encouragement is afforded to the maintenance of litigation on the wrong side. But, to all but lawyers, it is an evil of the first magnitude, the sense of security being in proportion to the extent to which its existence is known or suspected, weakened by it. Neither is it in any tolerable degree, adequate as to any good purpose, by which it can be supplied with a reason or a pretence. At one time, the Judge will not employ this faculty: his responsibility, real or imaginary, deters him: while, of any evil which may ensue from the non-employ-

ment of it, the odium will fall, he sees, not upon him, but upon the Legislature: at another time, you have a Judge who *would* employ it in favour of a suitor to whom he were favourable, but *will* not employ it in favour of the suitor in question, to whom he is adverse.

Instructional. Expositive. Exemplificational.

Art. 14. A case, alluded to in Art. 11, may afford an example: it is that of a law against assassination, converting, by looseness of expression, into a mortally punishable crime, the act of him who has drawn blood in the streets: thus a surgeon who, on seeing a man fall into a fit, bleeds him, is prosecuted—the Judge, if honest and timid, construes the law according to the letter, reluctantly: if adverse to the surgeon, and to such a degree dishonest, gladly.

Instructional. Expositive. Exemplificational.

Art. 15. This sort of case will have place as often, for example, as, in a penal law, a requisite *justificative* or *exemptive* cause has been omitted to be established: or in a non-penal law, having for its subject, contracts in general, or a particular species of contract, an *exonerative* clause.

Instructional. Ratiocinative.

Art. 16. Objections answered. Objections liable to present themselves are the following:—

"1. In this way, the legislative and judicial powers are confounded—united in one and the same set of hands—and of the legislative power itself, the two elementary powers, the initiative and the consummative."

"2. The legislative power thus given to the members of the judiciary extends over the whole field of legislation: no limits are, or can be, set to it."

"3. By the *eventually-emendative* and *sistitive* functions together, the *preinterpretative*, (as to which see Section 22,) is rendered useless."

Instructional. Ratiocinative.

Art. 17. Such are the objections. In each instance the incongruity pointed out will be found to be only apparent, and not real.

As to the initiative function here given to Judges. This is no other than that which is given not only to these same functionaries, but to every inhabitant of the state, and every inhabitant of the globe. Given it is without any the smallest risk or inconvenience: for, with the exercise given to the power, by the making of the proposal, the power ceases: no further power has the proposer, whoever he be, for the support of it. In the case of the Immediate Judge, true it is that, coupled with the opinion of his superordinates in the two grades, the mere inaction of the Legislature suffices for giving to his proposal the effect of law: in appropriate language for adding to his *initiative*, the *consummative*. But, neither can the Judge, any more than any foreigner, contribute any political power to the adoption of what he has thus proposed: and, besides his two superordinates above-mentioned, any two members when the proposal comes before the Legislature, which is what it cannot fail to do,—any two members, each at the expense of no more than three or four words, will suffice for defeating the proposal altogether: nor can it take effect during the sleep of the Legislature, for, directly delivered and perpetually renewed mementos are provided for keeping that body awake.

Instructional. Ratiocinative.

Art. 18. As to the unlimitedness, true it is, that, on the field of legislation, to this power, such as it is, no limits are here set: no less true is it, that an attempt to set any such limits would be a task of no small difficulty. On the other hand, not less true will it be seen to be, that, as to any such limits, there would be neither need nor use. That which could not be done without great difficulty and complication by definition, will be done without any difficulty by practice—by experience.

Instructional. Ratiocinative.

Art. 19. Wherever, through oversight, a clause, or a word, adverse to the general design of the law, has crept in, all persons whose views the design suits, will be glad to see the oversight repaired. This is what, without trouble to any of them, the Judge could do for all of them: this is what, without more or less trouble if at all, they could not do for themselves. So far, therefore, as a Judge is seen to be thus occupied, so far his amendments will be well received and employed. On the other hand, should it ever happen to a Judge to be seen abusing this liberty, by employing it in making encroachments from his own region into that which is above him, jealousy would be awakened, and the project crushed.

"This," (would this or that member say to this or that other,) "this is not serving us: this is setting up against us. This must be stopt: I will move rejection, if you will second me."

Instructional.

Art. 20. To Judges, all this will be no less manifest, than to Legislators. Every Judge will feel assured of being admitted to correct oversights, and save himself from being seen acting in the odious character of an instrument of injustice. No Judge can hope to give birth in this way to any independent and extensive measure.

Any little miscalculation which, on such an occasion, a man may have fallen into, the event will, in all quietness, immediately set to rights.

Instructional. Ratiocinative.

Art. 21. Neither to Judges Appellate, nor even to the Justice Minister, does it seem necessary that this power should be granted.

Not that it is not desirable upon occasion, that it should be exercised by them. What is desirable, is, that it should be exercised by both of them ; but by both under the same checks as those which apply to the situation of the Judge Immediate. In that of *Judge Appellate*, whatever alteration may happen to have presented itself to a man's mind in the character of an amendment, it is not in the nature of things that he should be at a loss for a *Judge Immediate* to propose it for him ; still less, in the still superior situation of *Justice Minister*.

Instructional. Ratiocinative.

ART. 22. In the text, against abuse in every shape in which the powers attached to these functions are exposed to it, appropriate warnings are given. But, supposing these warnings ever so much beyond expectation ineffectual, never could abuse approach to the height, at which it as yet stands everywhere : nowhere so conspicuously as in the field of English law : Legislators and Judges being, by habit, alike steeled against sensibility to the evils to which they are continually giving birth. "What the eye does not see," says the proverb, "the heart does not rue."

Necessary were all these functions, to the giving to the *forensic* the intended simplicity of the *domestic* system of procedure, and the appropriate aptitude, which, to the extent of its powers, the only familiar, yet so craftily and pertinaciously neglected system, possesses.

All this supposes the dominion of the only real law established over the whole field of law : all this supposes, sooner or later, completely extirpated the spurious substitute, sprung from necessity, nursed and kept on the throne by artifice—the chimera, called by such a multitude of names, of which *Common Law* is one.

SECTION XXII.

Preinterpretative Function.

Expositive.

ART. 1. To this function exercise is given, in so far as an application is by any person made, bringing to view a particular portion of the Pannomion, and requesting to know of the Judge, what, in case of a suit thereupon grounded, will be the import by him ascribed to it, and the opinative decree pronounced in consequence : all such other points in the Pannomion as are deemed to bear upon the point in question, being at the same time contemplated.

Enactive.

ART. 2. In this case, if reasonable cause of doubt appears, the Judge will not refuse to the public the security, which, by the removal of it, would be produced : nor to the applicant, —if so it be that he has any special interest in the import ascribed to the portion of law in question,—the like security, together with exemption from the vexation and expense inseparable from litigation, in particular from whatsoever might have otherwise been produced by elicitation of evidence.

Enactive.

ART. 3. If to the Judge, it shall, on this occasion, appear, that, by a correspondent amendment, ambiguity or obscurity may be cleared up, and that, by the benefit of such clearance, the evil, produced by the addition, if any, made thereby to the bulk of the rule of action, will be outweighed,—he will accordingly make transmission of such proposed amendment to the superordinate authorities, as per Section 20, and Ch. xi. MINISTERS SEVERALLY, Section 2, *Legislation Minister*.

Instructional. Ratiocinative.

ART. 4. Note here, that need of interpretation may have place, without deficiency on the part of the Legislator in any point of appropriate aptitude : without either sinister policy, on his part, or relative ignorance, or erroneous judgment, or so much as oversight : for, it may be, that at the time of enactment, the reason of the case requiring a certain species of objects to be included in the law, the existence of no individual belonging to that species was at the time realized, or could so much as have been anticipated.

Instructional.

ART. 5. On this occasion, an evil against which the Judge and the several superordinate authorities will be on their guard, is—the danger of doing injustice to other interests, which, by, or in consequence of, the statement made by the applicant, may not have been sufficiently brought to view. Accordingly, no such preinterpretation will the Judge ever afford, without having taken effectual measures for preserving all such interests from being injured, for want of adequate faculty of contestation and counter-evidence.

Instructional. Ratiocinative.

ART. 6. At any rate, if the response, being in disfavour of the applicant, he acquiesces in it, here is a saving of evil on both sides : to the applicant, whatsoever vexation and expense would have accompanied the elicitation of evidence on his side, and the contestation thereof with or without counter-evidence, on the adverse side : to him who would otherwise have been a defendant, the correspondent vexation and expense, together with that of the contestation on the point of law.

Enactive. Instructional.

ART. 7. Against frivolous applications, on this as on other grounds, for sinister purposes, such as that of inflicting vexation on the Judge, or preoccupying his time for the purpose of extinguishing evidence, or delaying justice, in

relation to this or that other suit or suits,—provision by responsibility, compensational or punitional, or both, as the case may require, will be seen in the Procedure Code: of the pecuniary responsibility, the produce may be paid into the *Equal Justice Fund*, as per Section 13, *Justice for the Helpless*, Art. 15.

Instructional. Ratiocinative.

Art. 8. Neither by the *eventually-emendative* function, nor by the *sistitive* function, nor by both together, can this same preinterpretation be said to be rendered useless. Need of preinterpretation may have place, where neither in matter nor in form, can imperfection be justly imputed to the work of the Legislature. At the time of enactment (suppose) the state of things in question, though lying within the reason of the law, neither was in existence, nor could have come under the contemplation of the law-makers.

Moreover, what is clear to one man, may be obscure or ambiguous to another: and many a man, to whose anxiety it would be an inestimable relief, to be assured what, on the point in question, the opinion of the Judge would be,—might feel himself altogether incompetent to sit in judgment on the work of the Legislature, and declare that it is or is not well-adapted to the purpose. No amendment will a judge take upon himself to propose to the Legislature, where he himself sees not any ground for doubt, nor hesitation as to the course be ought eventually to take. Yet, in a case of this sort, by a response, howsoever unfavourable to his hopes, the mind of an applicant may be set at rest, and, to parties on both sides, as above, the eventual vexation and expense of litigation saved.

Instructional.

Art. 9. So, where, for the point in question, no particular provision appears to have been made in any part of the law; in this case, the subject matter of preinterpretation will be—not this or that particular article of the law, but the whole body of the law taken together. The *interpretative* function, cannot plant certainty in any part of the field of law, without the previous toil of litigation: by the *pre*interpretative function, that same benefit may be obtained without being clogged with any of that hitherto inseparable burthen.

Section XXIII.

Application of Sections 19, 20, 21, *and* 22, *to the several Codes of the Pannomion, and to unwritten Law.*

Expositive.

Art. 1. In these four sections taken together, completion is given to the design commenced in Ch. v. Constitutive, Section 6, continued in Ch. vi. Legislature, Section 1, and further continued in Ch. xi. Ministers severally, Section 2.

Expositive.

Art. 2. Taken together, the cases provided for, by them, comprehend every shape in which imperfection can be imputed to any portion of law. Take the passage in question, whatever it be, if the party in question be dissatisfied with it, it is either because he does not clearly conceive the import, nor therefore the consequences of it,—or because, entertaining a conception, correct or more or less incorrect, of the import, he regards it with disapprobation; in the first case, either he finds himself unable to assign to it any import at all, in which case *obscurity* is the appellation of the imperfection he ascribes to it; or he finds his judgment and expectation hang in suspense between two or more imports in which case *ambiguity* is the appellation of it.

Instructional.

Art. 3. Beneficial effects endeavoured and expected to be produced by these arrangements, and in the character of *reasons*, operating in recommendation of them are the following:—

1. Preserving for ever from deterioration whatsoever symmetry comes to have been established as between the several Codes in the *Pannomion*, and their several parts.

2. Minimizing and indefinitely retarding, the need of consolidation laws: remedies which, how necessary soever, can never be applied, without more or less difficulty and inconvenience.

3. Preserving the Pannomion, in proportion as the parts of it are brought into existence, from being infested, and its usefulness impaired, by masses of that very sort of spurious and excrementitious matter, which it was originally employed to take the place of: matter, composed of masses of the so called *common law*, in the shape of Reports of judicial decisions, professed to be grounded on the law, together with dissertations, grounded partly on the genuine text, partly on this spurious matter, and succeeding one another without end.

It is for want of such an institution, that in this respect the condition of France, since the prodigious improvement received from Buonaparte's Codes, has been continually growing worse and worse. Not more than a dozen years have those five Codes been in authority, and already the field is crowded, the conception of the people perplexed, and uncertainty continually rendered more uncertain by swarms of commentaries.

Instructional.

Art. 4. Other good effects, but presenting themselves in a shape less tangible and ponderable, are the following:—

1. In matter as well as form, the general texture of the Code improved: improved, to wit, by the necessity which all persons, who engage in the task of endeavouring to apply

alteration or give initiation to law, will find themselves under, of applying their attention, with care and precision, to the very tenor of every portion of the existing law, on which the proposed new matter bears; thus rendering necessary, to the hope of acceptance a certain degree of skill on the part of the operator; and, in a proportion more or less considerable, repelling from the employment those who fail of being qualified for it.

2. By the publicity of the proceedings, the attention of all persons by whom the Judicatories are frequented, (and in and by Ch. xvii. Judicial Inspectors, it will be seen how numerous and influential they cannot fail to be,) will be so much the more frequently and closely applied to the business and forms of legislation. In this particular, the magnitude of the advantage gained is as the number of the Immediate Judicatories, to the number of the bodies occupied in the exercise of the powers of Legislation: that is to say, the Legislature and the several sub-Legislatures.

3. Of the members of the *Legislature* itself, the attention so much the more frequently called to the details of the process of legislation.

4. In regard to the whole body of the Pannomion, maximizing the facility of its melioration from all imaginable sources.

5. Disarming Judges of the arbitrary power of *frustration* and *alteration* under the name of *interpretation:* disarming them of the *power*, by divesting them altogether, and for ever, of the *pretence*. Hitherto, in all places and at all times, has this power been exercised: and, forasmuch as, in the effects of the exercise given to it, a mixture of good with the evil being frequently to be found; and the good the most prominent of the two,—never without unanswerable objections could it be either condemned or justified. By the here proposed means, now for the first time, the evil may be effectually excluded, and the good left pure. Under the existing system, scarce can imagination suggest the improper liberty which a Judge will not take with the declared will of a Legislature: under the here proposed system, none will any Judge ever dare to take: for the sources of excuse, elsewhere so abundant, will here be altogether wanting.

6. Securing identity to the import ascribed to the law, in all judicial districts and subdistricts,—instead of a diversity, with no limit to it, other than that of the number of subdistricts: securing thus a perpetual and all embracing uniformity of decision as between subdistrict and subdistrict.

Note that the functions, which, in the production of these six good effects have the principal share, are the *Contested-interpretation-reporting* and the *eventually-emendative*.

7. Enabling each and every individual, on every occasion, to learn in time what he may do, and what he cannot do, with safety: and what benefits he may expect from the law without being disappointed.

8. Liberating the people, from the yoke to which they have hitherto been subjected by the *opinion trade:* a trade carried on by law practitioners, selling at high prices, *guesses*, at what in the case in question the Judge whoever he may happen to be, will peradventure do. The simple course would be to ask the Judge himself, and this is what under the here proposed system, any individual is, on any occasion authorized to do; and this by a question, to which, with or without reference to the Legislature, the Judge is bound to give response.

The functions which in the production of these two good effects have the principal share, are—the *eventually-emendative*, as above, and the *preinterpretative*.

9. Excluding, or at any rate minimizing, the evil producible by execution given to this or that particular ordinance, rendered by oversight adverse to the general design of the whole body of the law, taken in the aggregate: perhaps even to the design of that same ordinance itself.

Necessary to the production of this effect, was the addition of the *preinterpretative*, to those two other functions. To the infinitely extensive mass of future contingent evil, apply the *eventually-emendative* and *preinterpretative* functions: to the present and to the impending and *paulo-post-future* evil, the *sistitive*.

Instructional. Ratiocinative.

Art. 5. Under unwritten or common law itself, pure will be the benefit produced by exercise given to this same sistitive function: pure from all danger of becoming alloyed with injustice. For, common law being in the whole unreal, is in every part of it unknowable, and of every judgment pronounced on the ground of it, the effect is accordingly retroactive: not more indisputably, nor more perniciously retroactive, can be any such proposed sistitive rule.

Too deplorable in every country would the condition of the people be, if the benefit derivable from the system of improvement were condemned to wait for so distant an era as that of the complete extirpation of so grievously oppressive and afflictive an intumescence.

Instructional. Ratiocinative.

Art. 6. The reason is no less decided in favour of *sistition*, where, without any such warrant as that which is here supposed to be given by real law, stoppage of a decision that would have been given on the ground of a supposed article of common law, is made by the mere authority of a Judge. True it is that in this case uncertainty is produced: but by this uncertainty, no certainty is destroyed; for that which has no existence cannot be destroyed: and some good is at the same time done; whereas, by doing otherwise, nothing but evil would have been done.

Exemplificational.

Art. 7. In English practice, a known distinction has place between deciding *according to the strict rules of law*, and deciding *according to the merits*. By deciding according to the strict rules, instead of according to the merits, is meant—deciding according to some rule, devised by sinister interest, as a pretence for deciding in direct opposition to the justice of the case, on the ground of a mistake, made (perhaps for the purpose) by a copying clerk, or of something else which has not anything more to do with the nature of the case. By deciding according to the *merits*, is meant deciding according to what, by any reasonable person to whom the judicial practice is unknown, would be regarded as being according to *justice*.

Exemplificational.

Art. 8. A practice has of late sprung up of making decisions according to what is regarded as the merits, in opposition to what, by the Judge who so decides, is declared as being according to the strict rules of law. Of this practice, true it is—that the effect is better than that of deciding otherwise than according to the merits. But how much better the effect would be if the innovation were authorized by real law, and accompanied by the obligation of making communications to the Legislature, as in the here proposed mode, —is sufficiently evident. Proportionably so would be the merit of the Judge who, on pronouncing his discourse, should declaredly give to the here proposed sole instrument of certainty, the authority of his name.

Ratiocinative. Exemplificational.

Art. 9. A foreign admirer of English judicature, little thinks how effectually it is in the power of a copying clerk, or his master, to sell a pardon to the most atrocious criminal, or to give to a defendant property to any amount belonging to a plaintiff, by the instrumentality of these same strict rules of law.

Ratiocinative. Exemplificational.

Art. 10. On this occasion as on others, as often as any new arrangement for the promotion of the public benefit is proposed, comes the question—if such be its utility, how happens it that in all this while, it has not, under any established system, been ever carried into effect, or so much as proposed? To give a specific answer to any such question, must be left to the historian. All that in this place can be done towards it is, to say in general terms, that of this imperfection as of all others, the cause may be seen in the want of identity of interest between governed and governors.

In these four sections taken together, by a slight addition made as above to the labours of the Judge, will be seen to be given not only a vast assistance to the legislator and an easy path for the admission of an endless mass of improvement, but in return for this small labour no small additional dignity to the situation of the Judge himself.

In the here proposed Code, all imperfections in the rule of action are by all such means as the nature of the case affords endeavoured to be as fast as they anywhere present themselves to notice, forwarded to the notice of the legislature and the public, to the end that, as soon as possible they may be removed.

In the hitherto established systems, all such imperfections are anxiously kept out of sight, that such of them as in the eyes of rulers are favourable to their particular and sinister interests may be preserved.

Even in the Anglo-American United States, with the exception of the Constitutional branch of law, into which irresistible necessity forced improvement,—under the guidance of the lawyer tribe, the great majority still keep themselves on their knees before the emanations of the corrupt despotism, from which they have emancipated themselves; the imperfections of which are covered from observation by a chaos of common law, through which their optics have never as yet been able to penetrate.

Section XXIV.

Judges' non-Contestational-Evidence-Elicitation Function.

Enactive.

Art. 1. To the Judge Immediate, for all purposes of judicial procedure, belongs of course the evidence-elicitation function: exercisable, as exercised antecedently to, and concomitantly with, litiscontestation.

For the mode of exercise, see *Procedure Code*, Ch. viii. Judicial Application, Section 8—*Application—its purposes.*

Enactive.

Art. 2. Among the purposes for which the correspondent application may be made, is the obtaining the sort of judicial service rendered by reception and registration given to orally, or upon occasion scriptitiously delivered, evidence, to whatsoever legal purposes eventually applicable.

Expositive.

Art. 3. The application may be either 1. Unilateral, or 2. Bilateral: unilateral, that is to say on one side only; in either case, having for its object an eventual suit, determinate or indeterminate.

Expositive.

Art. 4. Bilateral, the application is made by two or more, the applicants having for their object the settlement of some individual dispute, by the ascertainment of some fact or facts, on which it turns.

Instructional. Expositive.

ART. 5. In this case, the application is, with reference to the question of fact, analogous to what, in the case of the preinterpretative function, as per Section 22, it is with reference to the question of law.

Expositive.

ART. 6. Purposes, private or public: in either case, non-litigational or litigational: if litigational, suit non-inculpative or inculpative: suit, if inculpative, either non-criminative or criminative: suit in either case purely public or privato-public: understand by privato-public, affecting in such sort an individual or individuals assignable, as, by means of the evil of the second order, to affect the community at large.

In any case, the persons, which the application has for its object, whether in the situation (for example) of eventual pursuer, or in that of eventual defendant, may determinately and individually, or only indeterminately and specifically, be in contemplation.

Instructional.

ART. 7. For whatsoever purpose this same evidence-elicitation function be exercised—necessary to that same purpose, will be the registration of the matter elicited. As to the process, see Ch. xxi. IMMEDIATE and APPELLATE JUDICIARY REGISTRARS; Section 5, *Minutation how.*

SECTION XXV.

Judges', &c., Attendance.

Enactive. Ratiocinative.

ART. 1. *When sleeps Injustice, so may Justice too.* In an Immediate Judicatory, at no time is the Judicatory without a Judge sitting in one Justice Chamber at least: on no day in the week or year, in no hour of the twenty-four.

Expositive.

ART. 2. Considered in respect of *time*, judicial service, or say *duty*, is distinguished into *day* duty, and *night* duty: judicial attendance accordingly, into *day attendance* and *night attendance.*

Expositive.

ART. 3. Considered in respect of *place*, judicial service is distinguished into *home duty* and *out-door duty:* judicial attendance accordingly, into *home attendance* and *out-door attendance.*

Enactive. Expositive.

ART. 4. To the *Immediate* Judicatories alone, belong these distinctions in respect of *time* and *place.* For the mode of attendance on *night duty* and *out-door duty*, see Ch. xiii. JUDGES IMMEDIATE.

Enactive. Expositive.

ART. 5. The day duty is divided into a first part and a second part. The first part commences at 6 o'clock in the morning, and lasts till 2 o'clock in the afternoon, containing thus *eight* hours: the second part commences at 2 o'clock in the afternoon, and lasts till 10 o'clock in the evening, thus also containing *eight* hours. The night service commences at 10 at night, and lasts till 6 o'clock in the morning: thus containing also *eight* hours.

Instructional.

ART. 6. This, for example. In the several Judicatories, the legislature will settle this division of time, according to climate, temperature, and national habits, as general convenience shall be deemed to prescribe. For an Appellate Judicatory in particular, the hours of attendance will probably be taken partly from the time of the first part, partly from the time of the second part, of *day duty.*

Enactive.

ART. 7. Excepted days excepted, for the Judge Principal, *days* of attendance are all the days in the year: the excepted days are styled *relaxation days:* the number of them is fifty-two, equal to that of the days of general rest: with the addition of [twenty-six] other days, at his choice.

Enactive.

ART. 8. Thus in the case of a Judge *Immediate:* so, in the case of a Judge *Appellate:* that is to say, so long as any suit sent up from any Immediate Judicatory within the Judge Appellate's Judgeshire remains undecided.

Enactive.

ART. 9. *Hours* [eight] on an average.

Enactive.

ART. 10. Thus in the case of a Judge Immediate: so in the case of a Judge Appellate.

Enactive.

ART. 11. Where, to avoid breaking the thread of evidence or argumentation, the Judge principal sits over time on one day, he may sit so much the less on any day or days of the next [six] days.

Enactive.

ART. 12. But on no day or hour may he be absent from duty, unless some Depute, permanent or occasional, be present: when a successor appears and takes the seat, then and not before he who occupies it, quits it.

Enactive. Ratiocinative.

ART. 13. For the purpose of pecuniary remuneration, and the locability of Deputes, Judicial attendance is thus recorded. As in an Immediate so in an Appellate Judicatory, under the care of the Registrar, three *Attendance Registers*, a weekly, a monthly, and an annual one, are constantly kept. They are kept by manuscript en-

tries, daily made, in printed Tables, under the appropriate heads.

Enactive.

Art. 14. *Weekly Attendance Register.* This is thus kept. Vertical columns, seven: headed in a horizontal line, with the names of the days of the week: horizontal columns under, and crossing those same vertical columns, twenty-four: headed, each of them, on the left and right extremities, by the numerical names of the hours. On quitting his seat in the Justice Chamber, each occupant writes the initials of his name, in the compartments expressive of the several hours, during which he has been occupying it.

Enactive.

Art. 15. Of these *Weekly Registers*, four, placed in an horizontal line, compose a *Monthly Register:* the Register of a *Lunar* month.

Enactive.

Art. 16. Of these *Monthly Registers*, twelve, with the addition of a *Supplemental* one, containing the odd twenty-nine days, go to the composition of the *Annual Register.*

Enactive.

Art. 17. In a conspicuous part of the Justice Chamber, in type and position such as to be legible to the Probationary Professional Lawyers, as they sit in the Judiciary Inspectors' Compartment, as per Ch. xvii., and to the attendant suitors in their capacity of Judicial Inspectors as far as may be, the Monthly Register of the month is kept hung up: that month expired, it is slid away on one side, and another put in its place, the former one, however, remaining still visible.

Enactive.

Art. 18. Out of the materials furnished by these Registers, the Registrar frames the *Individual Service Calendar* of each Judge Depute, as per Section 28, *Locable who.*

Enactive.

Art. 19. Of each functionary, (the Registrar excepted,) the pecuniary remuneration is paid daily by the Registrar to the functionary, Principal, or Depute, on the official seat, according as it is by the one or the other that the seat is occupied: at the conclusion of the time allotted for the sitting, as per Arts. 5, 6. If at that time, neither Principal nor Depute be there present, the pay of that day reverts to the public, and the Registrar remains charged with it. In the Weekly Register, as per Art. 15, the act of reception is acknowledged by the initials of the receiver's name, written by his hand, with the initial letter R added.

Enactive.

Art. 20. On the last pay day, of every quarter of the year of his service, the functionary receives on his seat the pay of the *relaxation* days, *regular* and *chosen* together, included in that same quarter.

Enactive.

Art. 21. The Registrar being, as per Ch. xxi. Section 3, paymaster, he entitles himself in the same manner, to retain his pay, as it becomes due.

Enactive.

Art. 22. *Government Advocate's attendance.* Exceptions excepted, wheresoever and whensoever a Judge serves, so does a Government Advocate.

Enactive.

Art. 23. Exceptions are—

1. *Night-home* duty.

2. *Out-door* duty; unless in a case in which Government is a party, or at the instance of a party, the Advocate's attendance is excused by the Judge.

3. *Out-door* duty; if, by the suddenness and urgency of the demand, his attendance is rendered impracticable, without preponderant inconvenience, in respect of the delay or the expense.

Enactive.

Art. 24. *Eleemosynary Advocate's attendance.* Exceptions excepted, wheresoever and whensoever a Judge serves, so does an Eleemosynary Advocate.

Enactive.

Art. 25. Exceptions are—

1. *Night-home* duty.

2. *Out-door* duty; if in a case which, there being no party to whom his appropriate assistance should be afforded, his attendance is excused at the instance of any party, by the Judge.

3. *Out-door* duty; if by the suddenness and urgency of the demand, his attendance is rendered impracticable without preponderant inconvenience in respect of delay or expense.

Ratiocinative.

Art. 26. For the attendance of the Government Advocate and the Eleemosynary Advocate, the demand is created,—not merely by the need of their active service, on the occasions on which they officiate, but also by the need of their presence in the character of Judicial Inspectors of the conduct of the Judge. They being as well as the Judge paid for the whole of their time, it is matter of indulgence to them if, on any occasion on which the attendance of the Judge is demanded, attendance on their parts is ever excused.

Instructional.

Art. 27. In the case of out-door service at large, an adequate ground of excuse for either or both, may, however, be constituted by the addition that would be made to the expense.

Enactive.

ART. 28. *Registrar's Attendance.* Night-home duty excepted, whensoever and wheresoever a Judge serves, so does a Registrar.

Enactive. Ratiocinative. Instructional.

ART. 29. *Depute permanent's attendance.* In respect of *hours*, on the part of a Depute permanent in the several situations, assiduity of attendance will be the same, as on the part of the Principal, or in such other degree as on the occasion of the original location, or afterwards shall have been agreed on, between Principal and Depute: yet, so as, that, for want of some Depute, permanent or occasional, serving respectively in the number of hours appointed for the Principal, no business shall remain undespatched.

Instructional. Ratiocinative.

ART. 30. That, on the part of a Depute, in the several situations, experience, and consequent presumptive aptitude, for location in the situation of Principal, may be, as near as may be, coextensive with the experience of the Principal,—the Principal will bear in mind the giving the correspondent diversification to the employment of each Depute.

Instructional. Ratiocinative.

ART. 31. In this or that Judicatory, the Legislature, if by reason of the quantity of judicial business, and the smallness of the number of persons willing to serve as Deputes, it sees need, will provide pay for one or more Deputes permanent.

Instructional. Ratiocinative.

ART. 32. But, in that case, it will, it is supposed, see sufficient reason to avoid impairing the simplicity of the system, by relaxing the dependence of Deputes on Principals, or by admitting on the part of the Stipendiary Depute less closeness of attendance than what is exacted of the Judge Principal.

Instructional. Exemplificational.

ART. 33. Of the sort of uninterruptedness here required, examples are not altogether wanting in English practice. In respect of origin, they are but recent; and, in extent over the field of law, narrow,—limited as they are, to that part of it, which is covered by the Jurisdiction given to the subclass of *Justices of the Peace*, distinguished by the appellation of *Stipendiary Magistrates.* That which in this case expectation points to, is *uninterruptedness;* but, for the degree in which the expectation is fulfilled, the business takes its chance.

Instructional. Exemplificational.

ART. 34. Stipendiary Magistrates in the city of London, none: in the vicinity of London, Judicatories thus composed, nine: in each Judicatory, Judges, three:* sittings in some cases single, in other cases in pairs: in Manchester, one: in no other part of England, any.†

Instructional. Exemplificational.

ART. 35. To what is above the class of exceptions is but one: and it has been seen how narrow a one: general rule—the rule strictly observed by every other of so many thousands of these judges, this: when it is more agreeable to him to attend to the duty than to neglect it, he attends to it; when it is more agreeable to him to neglect it, he neglects it.

Instructional. Exemplificational.

ART. 36. But, *discontinuity*, all pervading discontinuity, is the leading principle. Of matchless constitution, *denial of justice*, and for lengths of time, altogether unknown in every civilized country, is among the characteristic features.

Instructional. Exemplificational.

ART. 37. In common Law cases, civil and criminal together; in common Law cases, as distinguished from Equity cases, from Ecclesiastical Law cases, and from Admiralty Law cases—intervals, in each twelvemonth, in each place, (the metropolis excepted,) two: to wit, in each of two terms of six months, days all but two or three. As for the case of exception, that of the metropolis, it is too much diversified to be taken for the subject of delineation here.

Instructional. Exemplificational.

ART. 38. In France, exceptions excepted, on the part of Judicial functionaries, continuity of attendance is left to individual probity, under the guardianship of chance.

Instructional. Exemplificational.

ART. 39. Exception is the sort of Judicatory, composed of the sort of Judges called, in imitation of the English system, *Justices of the Peace.*

Instructional. Exemplificational.

ART. 40. The number of sitting days in a week are settled by each Judicatory for itself by Regulations, which, for their validity, require the signature of the Justice Minister—*Garde des Sceaux.*

Instructional. Exemplificational.

ART. 41. But, in a criminal suit of the highest class, the suit once begun, sitting days are undiscontinued, until it is concluded. In the choice of the first day, endeavour is however used to avoid including a Sunday in the sequence.

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* The number is now reduced to two.—*Ed.*

† Liverpool has had one for the last three or four years.—*Ed.*

Instructional. Exemplificational.

Art. 42. General vacation time, two months in the year: viz. from 1st September to 1st November inclusive. But, during, or in the course of, this nominal vacation time,—the entire Judicatory being in general divided into several Judicatories,—each containing Judges more than one,—one of them, during the repose of the rest, sits, under the name of a *Vacation Chamber;* and thus, out of the vast disorder, constituted by this conglomeration of many-seated Judicatories, is deduced an imperfectly compensative remedy.

Instructional. Exemplificational.

Art. 43. In some cases, too small is the aggregate Judicatory to be regarded as capable of bearing to be thus divided. In these cases, the whole sits in continued sittings, in *Vacation* as well as *Term time;* and all the repose the Judges enjoy, extends not beyond a few days.

Instructional. Exemplificational.

Art. 44. In most Judicatories has place, on the part of all the Judges together, the practice of enjoying now and then by stealth a few holidays: at Easter three days; at Whitsuntide, three; at Christmas, three or four. *Allowed* by law these indulgences are not: but, neither are they repressed.

Instructional. Exemplificational.

Art. 45. Sitting time in a day, generally but *one: hours* in it *three.* But, in a case of urgency, another sitting time is added, with hours in it from 8 to 10; but, in this case, for refreshment, a small interval is taken by Judges and Jurors.

Instructional.

Art. 46. As between *day-service* and *night-service*, the division thus made of the whole *solar day*, or say *interval between one mid-day and the next*, will of course require to be modified according to the *time* of the year and the climate as per Art. 6.* What is ordained as above in the Enactive Articles, must not be considered as amounting to anything other than an exemplification of the *principle.* Of the hours comprised in the *day-service*, first half and second half taken together,—some will not be of the number of those in which the people in general are engaged in their ordinary *day* occupation: and, so far as this is the case, the transaction of the *judicial* business will not, at *those* times, be consistent with general convenience.

Instructional.

Art. 47. On this occasion, a distinction will require to be made between *casual* service and *appointed* service.

Expositive.

Art. 48. By *casual service*, understand *that*, the demand for which is constituted by cases of *urgency:* such, to wit, in which at any moment of the twenty-four hours, it may happen, that, by the indispensable regard for the ends of justice, demand shall be produced for the exercise of the functions of a Judge. Those cases will commonly be understood to come under the head of *cases of police:* but, be the *custom* anywhere what it may,—regard for the ends of justice can never either require or admit the establishment of *two* sets of judicatories—all over the territory of the state, or in any part of that territory:—*one*, for the sort of justice which has at all times gone under the name of *justice; another*, for the sort of justice which has in *modern* times received the name of *police.*

Expositive.

Art. 49. By *appointed service*, understand *that*, which is performed during a portion of the day, the commencement of which is determined by a special ordinance of the Judge. In this way will be marked out, whatsoever time is employed or to be employed in hearings with a *Quasi-Jury:* and, on each individual occasion, or by a general rule, for the commencement of such service, that hour and minute *may* be, and of course naturally *will* be, so marked out, which is regarded as most consistent with general convenience.

Instructional.

Art. 50. As on all *other* occasions, so on these,—for cases, which are not regarded as *cases of urgency*, such hours of commencement will, in every political state, and may in any judicial territory in the state,—be appointed, as are regarded as most consistent with general convenience: leaving, for sitting in casual cases, all hours antecedent and subsequent to those employed in these *appointed* sittings.

Instructional.

Art. 51. During a proportion of the year more or less considerable,—it may happen in the Judicatory, be it what it may, that, on this or that day, no individual *casual* case shall take place during the time, left as it were vacant, for the reception of such *casual* cases: and whatsoever may be the amount of the total quantity of time thus left unemployed in actual service,—the obligation of being thus in attendance for and during that same quantity of time, may at first view be apt to present the idea of *hardship*, as resulting from the imposition of this obligation on the Judge. But so long on further consideration—so long as a sufficient number of *relaxation* days are allowed, nothing of hardship it will be seen has place. So as he is but on the spot, the Judge will occupy himself in the manner most agreeable and

* Consideration, on this occasion, will be had of those parts of the globe in which, for a length of time, more or less considerable, no alternation between light and darkness has place.

convenient to himself; and thus it is,—that, so far from being less eligible, his condition will be more eligible than that of a person whose time of *labour* coincides with, and occupies the *whole* of his time of *attendance*.

Instructional.

ART. 52. Two standards of reference applicable alike to all political states and all climates, suggest the two following rules:—

I. Among public functionaries in the several departments, in all grades from the lowest to the highest, whatever is the number of the days in the year, and of the hours in the day, by custom or regulation occupied by any individual, without detriment to health, that same number is the least which ought to be occupied in the department of *justice*.

Instructional.

ART. 53. II. In the instance of whatever *grade*, how *low* soever, without detriment to health, the number of days and hours of attendance on duty is greatest,—as in the case of every other department, so in that of the judicial, that same number may without hardship be exacted of those functionaries whose situation is in the *highest* grade.

Instructional. Ratiocinative.

ART. 54. If there were any difference, it is in the case of the functionaries of the highest grade that the closest attendance should be exacted. Why? Because in respect of remuneration and thus of compensation, if even the pecuniary part is not superior, that which consists in power and dignity, cannot but be so. For the contrary practice, so far as it has place, *justificative* reasons there cannot be any: of *historical* or say *æteological reasons*, or in one word *causes*, there is this obvious one: to wit, that it is by the most powerful classes that the proportions have been determined: those next in power to themselves, are of course those which are most favoured by them, to the prejudice of all still inferior classes.

Instructional. Exemplificational.

ART. 55. In *England*, the result of a superficial glance would give to this æteology a peremptory falsification: it would present to view the highest class of Judges in the character of *martyrs*, to their zeal for the public service, and discharge of their official duties: and the superiors, the members of the legislature, persevering with apathy in the practice of keeping them in the state of martyrdom. By a more particular inspection the illusion would be dissipated.

Instructional. Exemplificational.

ART. 56. While judicatories, of various fields of service and divers grades, swarm in countless multitude; and while, in each of the three common Law Judicatories which occupy the grade next below that highest which is constituted by the House of Lords, four Judges are employed in doing badly what would be done much less badly by a single *one*; the number of these individual judicatories, is to a most flagrant degree inadequate to the demand. For, notwithstanding the immense number of suits which are prevented from coming into existence, by the impossibility which those who would have been suitors, are laid under, by the price exacted for their admission into that situation, (of which number, upon a very moderate guess, nine-tenths would be too low an estimate)—still the number of those which are actually instituted in those judicatories is so great, and the quantity of business in them is so great, as to exact at the hands of these Judges, and in particular of the chief of every four, a greater quantity of labour, than their constitutions are able to endure, without manifest and frequently exemplified detriment to the health of several of them. To apply to this deficiency an adequate remedy, would require more skill than the class of those on whom it depends, affords: the applying anything in the guise of a remedy, could not be so much as attempted, without incurring the intolerable reproach of *innovation*.

Instructional.

ART. 57. The result is—the bespeaking, and purchasing, at the expense of the people, by high premiums, this slow suicide: impunity for transgression in every shape; enormous salary; and, for the continuance of this enormous salary, continuance in office, notwithstanding intellectual inaptitude,—such are the principal *items*, of which this bounty is composed.

Instructional.

ART. 58. Of such a chaos whatsoever can be predicated, subjects the *Censor* to a most perplexing dilemma. Predicating unfavourably without exception, he exposes himself to the reproach of insincerity and injustice: undertaking to give all the exceptions, he engages in a labyrinth of dissertation without end.

Instructional. Exemplificational.

ART. 59. That the suffering, to which the twelve* Judges are thus subjected, is the result of anything rather than a regard for justice, is proved by the *exceptions* which have place. Judge of his single-seated Judicatory, the Lord High Chancellor, (in whom the twelve Judges behold their creator,) bestows upon the business of justice, just as much and just as little of *his* time, as is convenient and agreeable to him: the remainder of his officially-employed time is employed—in allaying the squabbles, and helping to organize the corruption-operating measures of an impenetrable and irresponsible Cabinet. Such, in a greater or less degree, has been the state of things at all times; and in the course of the five or six and

* Now fifteen.

twenty years' reign of the late Chancellor,* to atone for his inaptitude in every shape, and for the insufficiency of the quantity of time bestowed by him upon the business of judicature, the *suitors* were saddled by him with the delay, vexation, and part of the expense, and the population at large with the other part of the expense, of an additional *grade* or say *stage* of judicature, inserted in the midst of the old-established ones. From the Master in Chancery to the Master of the Rolls: from the Master of the Rolls to the Chancellor: from the Chancellor sitting alone to the same Chancellor sitting with three or four reluctant, ignorant, heedless, living appendages stuck down by him for appearance sake, in the House of Lords,—was not enough: between the Master of the Rolls and himself did this creator and preserver of all Judicial abuse, cram in a Vice-Chancellor; lest the number of the snares and plagues rained down upon the people on pretence of administering justice should be incomplete.

Instructional.

Art. 60. Under these circumstances—what, in regard to these functionaries, is actually the state of things? *Answer:* that no hardship is felt:—the functionaries receiving that which is the most agreeable to them—namely, money—in lieu of that which is less agreeable to them—namely, ease. As to the offices and the functionaries taken together, what then ought to be the state of things? *Answer:* to the offices, such number given, and, to each functionary so occupied, such time of attendance prescribed, as shall afford to this department of government, a sufficiency of appropriate labour, or say *functionary-power*, in this case *Judge-power*, (as men say *steam-power*,) without detriment to the health of any of the individuals so occupied.

Instructional.

Art. 61. As to what is the requisite number of the Judicatories,—antecedently to experience, not in any State,—and, in particular, not in any State by which the principles of this Code may come to be adopted, can any adequate indication be given of what that number will be. Antecedently to experience, alike impossible will it be found, to determine the number of the persons who will be able, and at the same time willing, in the several judicatories, to serve upon the proposed gratuitous terms, in the capacity of *Deputes*, to the Judges, and to the several other judicial functionaries. In this state of things,—another state of things, the existence of which, cannot, consistently with any knowledge of human nature, fail to be anticipated, is—on the part of those on whom it immediately depends, a general disposition and endeavour, to produce, in the aggregate number of these gratuitously serving Ministers of Justice, a deficiency, real or apparent; to wit, for the purpose of bringing about an augmentation in the number of the salaried situations, of which the Justice Minister will have the disposal; and to which the individuals, who dedicate themselves to this branch of the public service, may aspire. Such are the moral forces with which, on this occasion, the Legislature will have to contend.

Instructional.

Art. 62. Under the actually established English system, though in some parts so highly redundant, in other parts thus lamentably deficient is the number of the Judges. Hence, in the chain of official service, those vast *gaps*—those solutions of continuity—of which injustice by inaction, and oppression by positive action, are at once the results. By the inaction, for so long as it lasts,—justice is, in all cases in all sorts of suits—denied. But, it is in the field of penal law, and in that to a vast extent, that the oppression, and consequent evil, produced by an exercise of the judicial power, is, in a more particular degree, *flagrant*. For what is called *a bailable offence*—that is to say, an offence, for which, if he could find persons willing to bind themselves for his appearance, he would not be committed to prison—the Defendant, guilty or innocent, must, if he cannot find such bail, be committed to prison. Committed! and for what purpose? For no other purpose than that of securing his forthcomingness at the next sitting of that same Judicatory, or any other, whatever it may happen to be, to which his lot is consigned. As to the length of this interval of undue sufferance, it depends upon a variety of accidents, not one of them having any connexion with the conduct of the accused: it depends upon the nature of the Judicatory, and upon a variety of local circumstances. Accordingly, the duration of it is of various lengths, from a single day to two hundred days or more: all that time, guilty or innocent, the man is kept in a state of equal sufferance; ruined probably in mental constitution, by converse with the associates into whose company he has been thus forced; and, whether *so* ruined or not, ruined in reputation as well as in pecuniary circumstances.

Instructional.

Art. 63. The demand, continually apt to arise for the exercise of the legislative function, would of itself suffice to demonstrate the inadequacy of every system of law, under which any intermission of the exercise of that paramount and all-embracing duty, is allowed. It will of itself be a proof that, under all representative constitutions as yet established, the universal interest has, in the eyes of the legislature, been eclipsed by the particular interest of the legislators. Everywhere, for their own personal accommodation, regardless of the interest of their constituents, have those bad and unfaithful servants, given them-

* Lord Eldon.

selves long periods of inaction, as schoolmasters (but with much less lack of reason) give long holidays, really to and for themselves, nominally to and for their scholars. Monarchy, even the most absolute—Monarchy, with all its still greater evils, has the advantage of being exempt from this. Under that form of Government, at no time is the power wanting—at no time anything more than the will—to provide for any accident whatsoever: to apply to every oversight, and every mischance, the best remedy which the nature of the case admits of.

Ratiocinative.

ART. 64. What would be thought of the founder of an Hospital, who, during half or a quarter of the whole number of months in a year, should provide for its being shut up, and the patients turned into the streets, or left to perish for want of relief? But, in the case of the Hospital, the evils, the cause, and the authors would all be more or less extensively visible; whereas in the case of the Legislature, how extensively soever visible the evils may be, the cause lying buried in the wisdom of dark ages, the evils are not traced up to it: and the authors of the continuance of the evil not being the authors of the commencement of it, are screened by their predecessors from the reproach so justly due.

Ratiocinative.

ART. 65. For so flagrantly mischievous and absurd an institution as that of a regularly sleeping Legislature, only from the *Book of Fallacies* could anything in the shape of the shadow of a justification, or even so much as a palliative, be produced.

Instructional. Ratiocinative.

ART. 66. If, with any degree of reason, these observations are applicable to the business of legislation, with still more manifest reason are they to those of judicature. But, *flint* is the matter, of which, as yet, the hearts of all ruling functionaries have been composed.*

SECTION XXVI.

Judges', &c., Term of Service.

Enactive.

ART. 1. A Judge's term of service is for life: unless in case of dislocation, as per Section 30, *Dislocable, how.*

Enactive.

ART. 2. So, that of a Government Advocate.

Enactive.

ART. 3. So, that of an Eleemosynary Advocate.

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* Since the first volume was printed, comes a document, which (not to speak of so many others, which a search made on purpose might discover) may, in the case of the legislature, serve to place the importance of undiscontinued sitting, in an instructive point of view. In Ireland, of seven millions, *six*, for the benefit of 400,000 of the other million, are, by the laws and the execution given to them, thrust down into a separate class, on which (all relaxation notwithstanding) hardship and contempt are continued to be heaped in variegated abundance. Consequences, natural and certain: on the part of the injured millions, correspondent discontent: on the part of the authors of the injury, correspondent alarm; with continuance or repetition of hostile, in the place of judicial procedure, for the suppression of that counter hostility, for which the whole frame and practice of government is one continued provocation.

Amongst other statutes made under the pressure of this exigency, is one which not only in common, but also in official language, is called the *Insurrection Act:* insurrection being regarded, and with but too full cause, as an occurrence continually either in existence, or impending: the whole frame of government being such as, if it had for its purpose the production, suppression, and reproduction of insurrection, in a perpetual series, could not have been more appropriately devised.

Of this same Insurrection Act, such is the matter and spirit, that to have rendered it perpetual, would have been to make declaration of a system of government, such as could scarcely fail of consigning to destruction the very class for whose sake it would have been pursued: for, so long as fire will burn, in the power of an encompassing and exasperated majority, will always be the habitations of the minority, with their real and personal contents. Such is the state of things, in which during about half of every year (with custom for sole reason) the legislature keeps itself in sleep and impotence.

Behold now an example of the consequence. In the opinion of the possessors of the constituted authority, —the executive, comes a demand for the powers given by this same Insurrection Act: that Act, "the administration" of which, was (it seems) "so efficacious in a former crisis of difficulty and danger." But the Act is dead: to resuscitate it, another act would be necessary. Such other act, when is it then that it could be had? not till "*some months*" are over. But if, without any such corroboration, at the accustomed rate, government can be carried on for some months, why not for any number of years?

Extract from the Morning Chronicle, 16th November, 1827.

IRELAND.

Extract from a letter signed William Lamb, and written in the name of the Lord Lieutenant, to the Earl of Llandaff, in his capacity of chairman of the General Meeting of Magistrates of the County of Tipperary, held on the 20th of October, 1827.

"The Magistrates are apprized that the Lord Lieutenant cannot exercise the powers conferred by the Insurrection Act without a new act of the legislature: and as Parliament is not likely to assemble, for the despatch of business, before the usual period of time, some months must elapse before any application can be made for such a statute.

"His Excellency trusts that the Magistrates will apply to the exercise of such means and powers as the present laws afford, the same spirit of fortitude, zeal, and activity, which rendered the administration of the Insurrection Act, so efficacious in a former crisis of difficulty and danger."

Enactive.

Art. 4. So, that of a Registrar.

Ratiocinative.

Art. 5. Why are not the functionaries here in question, continued in office during good behaviour?

Reason. Answer.

Because continuance in office during *good* behaviour, is continuance in office during *ill* behaviour.

By continuance in office during good behaviour, is meant, continuance in office during life, or so long as the functionary pleases, subject only to dislocation by judgment of a Judicatory, grounded on such evidence as is required by a Judicatory. But in any office whatsoever the functionary may be rendered completely inapt, in respect of every one of the several branches of appropriate aptitude: and may, therefore, without the possibility of being dislocated, produce evil to an extent altogether unlimited.

First as to moral inaptitude. Not to speak of moral inaptitude in other shapes, moral inaptitude in the shape of corruption, may have place in any office, to any extent, without possibility of adequate proof, by judiciarily receivable evidence.

Of this position, the most perfect demonstration has been given elsewhere.* To the corruptee it is known by circumstances, what on the occasion in question, is the wish of the corruptor: say for example—the acquiring or retaining an estate in litigation. Between a son of the corruptor a man of wealth,—and a son of the corruptee a Judge,—it is settled, that upon the corruptee's adjudging to the corruptor, the estate in question, the corruptor shall give to the son of the corruptee, a lucrative office, or his daughter to wife, with a large fortune: and to the father—by whom is made to his son, a certain allowance, which on his receipt of the provision in question, he withdraws,—it makes no difference whatever, whether the hand, into which the money is paid, be his own, or his son's. Of neither of the sons, is it in the least degree probable, that he will spontaneously come forward in a Judicatory and give evidence of the transaction,—thus spontaneously calling down upon himself the indignation of his father, and covering the whole family with disgrace. But this is but one out of an infinity of other ways in which the same corrupt purpose might be effected.

Ratiocinative. Exemplificational.

Art. 6. By this phrase *during good behaviour*, an exemplification is given of two things: the power which, by long connected association, words have of producing delusion: and the influence exercised over the understanding of the people of the United States, by the practice of a Government, the yoke of whose oppression they have shaken off.

Ratiocinative.

Art. 7. On the part of public functionaries, good behaviour is, on this occasion, regarded as a thing of course. If, on this occasion, and on the part of the functionaries in question, why not on every occasion, and on the part of functionaries in all departments, and of all ranks? Absolute monarchy would, on this supposition, be the simplest, and require the least expense of thought, to institute.

Ratiocinative. Exemplificational.

Art. 8. On the direct contrary supposition, was founded the general plan of the constitution of the United States: although the Judges there retain their office during *good behaviour*. What seems to be forgotten is—that in that Government, there is not, as in that from which that country has so happily made its escape, any such monarch, from whose dislocative power it was so necessary that the functionaries in question should be secured, seeing how assuredly it would be exercised for the advancement of his sinister interest, and by the sacrifice of that of the people.

Ratiocinative.

Art. 9. Note that, under the here proposed constitution—it not being a federal one, over all functionaries in question, dislocative power by the hands of the constitutive, is capable of being exercised with much less difficulty than under the United States constitution. And this is one among the disadvantageous circumstances attached to a federal government, which, however, was in their case the only practicable one.

Ratiocinative. Instructional.

Art. 10. In the case of *good behaviour*, the way to secure its existence, is to take for granted the existence *not* of good behaviour, but unless excluded by adequate prevention, the very opposite of it.

Ratiocinative.

Art. 11. Next as to intellectual aptitude or inaptitude. Perfectly compatible with complete absence of ill behaviour, as above, is the most perfect absence of appropriate intellectual aptitude.

Ratiocinative.

Art. 12. Lastly as to active aptitude. Not less compatible with complete absence of ill behaviour as above, is the most perfect absence of appropriate active aptitude.

Section XXVII.

Judges', &c., Remuneration.

Enactive.

Art. 1. The pecuniary remuneration is—

* See Book i. Ch. x. Corruption.

Of a Judge Immediate, [ ] per day.
Of a Judge Appellate, [ ] per day.
Of a Government Advocate Immediate, [ ] per day.
Of a Government Advocate Appellate, [ ] per day.
Of an Eleemosynary Advocate Immediate, [ ] per day.
Of an Eleemosynary Advocate Appellate, [ ] per day.
Of a Registrar Immediate, [ ] per day.
Of a Registrar Appellate, [ ] per day.

Enactive.

ART. 2. At the charge, or by favour of no individual, can any such functionary, or any Depute of his, lawfully receive money or money's worth, or benefit in any other shape, on account of anything done, or expected to be done, or forborne, by him, by means of his official situation. From unwilling hands, any such receipt will be extortion; from willing hands corruption.

Instructional. Ratiocinative.

ART. 3. From money or money's worth, received to the use—not of the Judge himself, but of this or that person connected with him, by this or that tie of interest, self-regarding or sympathetic, the benefit accruing to the Judge, thence also the corruptive effect produced in his mind, may be of any magnitude, not exceeded even by that which it would be of, if received by the Judge, with his own hands, to his own use; nor would any participation, on the part of the Judge, be always necessary to the production of that effect. Yet for the act of any such other person, to inflict punishment on the Judge, would be altogether unjust, and highly mischievous: it would give to persons at large, in an indefinite number, the power of consigning to poverty and infamy, functionaries in any number, whose conduct in that situation had been pure of blame.

Enactive.

ART. 4. But, if of any act done by a Judge, the justice be to a certain degree dubious,—benefit in any shape, or promise thereof, conditional or unconditional, received by any connexion of his as above, may serve or help to form a ground for Appeal; for Appeal, and in case of participation proved, with or without dislocation, and with or without punishment, in the name of punishment, and compensation to party or parties injured.

Enactive.

ART. 5. On his responsibility, compensational and punitional in case of frivolous and vexatious accersition and interrogation, through insincerity or temerity,—any person may put questions, tending to the manifestation of the receipt, actual or expected, of any such benefit, by the functionary, or any person so connected with him as per Art. 3: and this, as well to any person so connected or supposed to be connected with him, or to any person at large, as to the functionary himself, in like manner, as per Section 16, *Partiality obviated:* and for procuring upon occasion, by accersition, prehension and adduction, or epistolary interrogation, as the case may require, the requisite sources of evidence, the same means will be employed as in the case of a suit at law.

Ratiocinative.

ART. 6. As to the Judge, if no such occurrence has taken place, no harm results to him; if any such occurrence has had place, still no wrong is done to him by the divulgation of it. If in his conduct there be nothing wrong, nothing done by any other person, howsoever connected with him, can render it so.

Instructional.

ART. 7. In the case of the Immediate functionary,—added to the pecuniary remuneration, and the natural and inseparable power and dignity, is the encouragement afforded by the exclusive prospect of promotion, to the correspondent office in an Appellate Judicatory, with its superior power and dignity and its comparative ease, as per Section 25, *Judges', &c., Attendance:* namely, by immunity from Night and Out-door duty, and from the obligation of holding personal converse with the promiscuous multitude: the subject matter of decision being, in an Appellate Judicatory, composed exclusively of the matter of the record, transmitted from the Immediate Judicatory, with or without argumentation thereupon.

Instructional.

ART. 8. In the case of the Depute permanent, added to the inseparable power and dignity is the encouragement afforded by the exclusive prospect of location as principal in an Immediate Judicatory, and thence of promotion to the correspondent situation in an Appellate Judicatory.

Enactive. Instructional.

ART. 9. No services, no remuneration. For the manner in which service and remuneration are knit together, see Section 25, *Judges', &c., Attendance.*

Instructional.

ART. 10. By the pecuniary competition, (as to which see Section 28, *Judges', &c., Locable who,*) antecedently to experience, no assurance could be given, that, how large soever the appointed salary, it might not be reduced to 0, or even to less than 0: more than the salary was worth, being given for it.

Instructional. Exemplificational.

ART. 11. In France, under the *ancien regime*, in the sort of Judicatory styled a *Parlement*, scarcely (it is believed) did the emolument in all shapes, attached to the situation of Judge, amount to ordinary interest upon the

also the grounds of it, a view has been given already. Of all these grounds, with the exception of that which applies to the demand for a special limiter, not one, it may be seen, has place in the present instance.

Exemplificational.

Art. 17. In English practice, the provision made for business of this sort, stands exemplified in two sorts of Judicatories, termed Audit Courts, and Courts of Claims already mentioned in Section 1. In both these instances, but for the requisite explanations, the composition of the Judicatory might convey the idea of a system more favourable than the one here proposed, to the joint interests of economy and justice. No Eleemosynary Advocate; not even so much as a Government Advocate. The more profusely overloaded with emolument that office is in other instances, the higher is the value that will be apt to be set upon the saving made by the omission of it, in these. But were even economy everything, and justice in other respects nothing, loss to an incalculable amount, rather than saving, would be the natural, not to say the necessary result.

Such would be the case were there in each Judicatory but one Judge. From this total darkness, he would derive the uncontrolled power of ministering to the sinister interest and desires, signified or anticipated, of the patron by whom he was located. Oppression would thus be exercised on this or that individual: depredation consummated in favour of this or that other. But in practice, the number runs above one in an indeterminate degree: and by and in proportion to the number, the abuse, instead of being checked, is more likely to be multiplied. The majority has in this case the power of preventing it at the hands of the minority, but who of them all has the inclination! By opposition, no one would gain anything but ill-will and discomfort to himself. By connivance at the malpractices of his several colleagues, success to his own may be secured by every one. In all such harmony the presence of another instrument of Government in the character of an Advocate would suffice to plant disturbance. With him would unavoidably come in more or less of a public. By those other instruments of Government, otherwise than at the instance of this one, in favour of any sinister interest on the part of the ruler, to the prejudice either of the public or of individuals, nothing, how well soever inclined, could they thus venture to propose—nothing for which a ground ostensible and more or less plausible, could not be made.

Section XXX.

Judges, &c., Dislocable how.

Enactive.

Art. 1. A Judge, whether Immediate or Appellate, is at any time dislocable by the Justice Minister, (he proceeding in the exercise of his Judicative function, as per Ch. xxiv. Section 4, and not otherwise;) also, by the operation of any one of the efficient causes of dislocatedness, applying to the case of a Member of the Legislature, as per Ch. vi. Section 30.

Enactive.

Art. 2. So, a Government Advocate.

Enactive.

Art. 3. So, an Eleemosynary Advocate.

Enactive.

Art. 4. So, a Registrar.

Enactive.

Art. 5. If in any one solar year, the service-time of a Judge Depute permanent, as per Section 23, *Locable who*, falls short of [one-fourth] part of the maximum of a Judge Principal's required service-time during that same period, his name is, on the first day of the ensuing solar year, eliminated from the list of Judge Deputes permanent: the conclusion being formed—that either the requisite closeness and punctuality of attendance is greater than he can endure, or, in the eyes of the Judge Principal, he is deficient in appropriate aptitude, absolute or comparative.*

Enactive.

Art. 6. A Judge Depute permanent is moreover dislocable by the several causes of dislocation, by which a Judge Principal is dislocable: see Ch. xiv. Section 2, *Relation to Principal.*

Enactive.

Art. 7. Thus in an Immediate Judicatory, so also in an Appellate.

Enactive.

Art. 8. So, a Government Advocate Depute permanent.

Enactive.

Art. 9. So, an Eleemosynary Advocate Depute permanent.

Enactive.

Art. 10. So, a Registrar Depute permanent.

Section XXXI.

Judges', &c., Inaugural Declaration.

Instructional. Ratiocinative.

Art. 1. Use of this instrument. As in other high official situations, so in the present case, the use of an Inaugural Declaration is this:—to direct the attention of the public at large

* Provision is thus made against superfluous and sinecurist Judge Deputes permanent.

to those points in the conduct of the functionary, in respect of which, by the nature of his situation, he stands in the greatest degree exposed to the temptation of swerving from the line of duty: and in a more especial manner, to those on which the force of the political, including the legal sanction, not being so easily or effectually brought to bear, aid from the popular and moral sanction is most needed.

Under this description, come in a more especial manner, those cases, in which the aberration has place—not *in toto*, but only in degree: on the face of the instrument they will easily be distinguished.

I. *Execution and Effect promised.*

ART. 2. I will in all things, so long as I continue in the exercise of the functions belonging to this my office, pay obedience to the law: I will on each occasion use my best endeavours to give execution and effect to every part of it, according to what shall appear to me to be the intent of the Legislature for the time being: not presuming on any occasion to substitute any particular will of my own, to the will of the Legislature, even in such cases, if any, where the provisions of the law may appear to me inexpedient: saving only the exercise of such discretionary suspensive power, if any, with which the Legislature may have thought fit to intrust me.

II. *Impartiality in the general exercise of Power promised.*

ART. 3. On every occasion, in the exercise of this my vocation, sincere and anxious shall be my endeavour, to keep my mind as clear as may be of undue partiality in every sense: of partiality in favour of any class or individual, to the injury of any other: of partiality, through self-regarding interest: of partiality, through interest inspired by sympathy: of partiality, through interest inspired by antipathy: more particularly will I be on my guard against partiality in favour of superiors, to the prejudice of inferiors: of superiors, in whatsoever scale of comparison—opulence, power, reputation, talent—natural or acquired.

III. *Bribery dispromised.*

ART. 4. I will not at any time, accept any gift or favour, that shall have been offered me, in the view either of influencing or recompensing my conduct on any particular occasion in the discharge of the functions of my office: in case of my suspecting any benefit to have been conferred on me, or offered to me, or to any person supposed to be connected with me, or intended to be so conferred, with any such view, I will forthwith declare and make public, such my suspicion: nor will I, knowingly and wittingly, suffer, if it be in my power to prevent it, any such offer or recompense to be made, on any such account, to any person dependent upon or connected with me: but that on suspicion of any such offer or recompense, I will forthwith make public such my suspicion, together with the grounds thereof and the names of all parties concerned.

IV. *Secret intercourse with Applicants dispromised.*

ART. 5. I will not, on any account, give ear to, but indignantly reprove, any application that may be made to me, in any manner or place other than on the judgment seat, and in the hearing of all, in relation to any cause, in contemplation of its depending or coming to depend before me: much less will I give any opinion or advice relative thereto: and should any such application be made to me in writing, I will forthwith produce and read the same in open Judicatory, although it should be contained in a private and confidential letter: so likewise if, having been addressed to any one else.

V. *Publicity promised, where due.*

ART. 6. I will not endeavour to keep secret, but on the contrary, study by all suitable means to render in the most extensive degree public, the proceedings in all cases, except those in which the law shall have ordained them to be kept secret.

VI. *Secrecy promised, where due.*

ART. 7. On every occasion, on which, in relation to any part of the proceedings belonging to my office, the Legislature shall have ordained secrecy to be observed, my sincere endeavours shall be applied to the giving full execution and effect to every ordinance directed to that end.

VII. *Non-revenge for Obloquy.*

ART. 8. Whatsoever reproach may happen at any time to be cast upon me, (or any other functionary of the Judicatory,) whether in respect of my demeanour in the exercise of the functions belonging to my office, or on any other account, never will I, by means of any power or influence, derived from my office, cause, or seek to cause, or willingly suffer, evil in any shape to happen to any person concerned in the casting of any such reproach: saving only, in case of mendacious or culpably temerarious falsehood, designed or tending to the production of such evil effect, my right of applying to some other Judicatory, for such satisfaction, for wrong, or punishment, or both, as in the eyes of the Judge, the case shall appear to require.

VIII. *Non-self-servingness.*

ART. 9. I will not, on the occasion of any pecuniary or other bargain, or understanding, directly or indirectly, receive or avail myself, or endeavour to avail myself, of the influence or authority of my station to obtain any advantage to myself or any other.

IX. *Non-electioneering.*

Art. 10. I will not take any part whatsoever in any election, nor use any means, direct or indirect, to influence the vote of any other; excepting only the public statement of my pretensions according to law, on any election in which I shall myself be a candidate.

X. *Non-absentation.*

Art. 11. I will not willingly absent myself from duty, except to the extent of the time allowed me by the law, or in case of unavoidable necessity, resulting from sickness or otherwise; nor then, without making the best provision in my power for keeping my place supplied.

XI. *Despatch.*

Art. 12. I will, as far as depends upon me, give to every cause that comes into my hands, the utmost despatch that shall appear to me consistent with the purposes of justice: nor will I put off any cause, or give to any cause, the priority over another, but for special reason publicly declared.

XII. *Non-precipitation.*

Art. 13. I will at no time, through impatience or otherwise, knowingly cause or permit justice to suffer by undue precipitation; and in particular, I will not bestow less attention upon the cause of the poor than of the rich; considering that, where small rights are seen to be contemned, great ones will not be deemed secure: and that importance depends not upon nominal value, but upon the proportion of the matter in dispute to the circumstances, and its relation to the feelings of the parties.

XIII. *Expense minimized.*

Art. 14. I will not, through favour to those who profit by the expense of the administration of justice, connive at, much less promote, any unnecessary expense; but, on the contrary, study, as much as in me lies, to confine such expense within the narrowest bounds compatible with the purposes of justice.

XIV. *Non-impatience.*

Art. 15. I will not, through impatience or favour to the official, or to the professional advocate, show discountenance to him who pleads his own cause, or to him who pleads gratuitously the cause of his friend, but rather show indulgence and lend assistance to their weakness.

XV. *Non-partiality by Deputation.*

Art. 16. I will not either make or revoke any appointment of a Depute, permanent or occasional, with a view to favour or prejudice any suitor otherwise than according to justice; but for the common convenience of suitors, and only to the extent of the number which shall appear to me requisite to that end.

XVI. *Falsehood for elicitation of Truth dispromised.*

Art. 17. On no occasion, nor for any purpose, although it were for the elicitation of material truth, will I employ any untrue assertion, direct or implied, for any such purpose as to cause any witness to believe or suspect that by any other witness, some matter of fact has been disclosed, that has not been disclosed: yet, while thus avoiding the utterance of falsehood, for the elicitation of truth, I will avoid at the same time, by disclosure of any evidence which has been delivered, the affording to any witness, any positive facility for the fabrication of false or other deceptious evidence. On every occasion it shall be among the objects of my endeavours to keep my own discourse, and, as far as depends upon myself, the discourse of others, as pure as may be, from the taint of fallacy in every shape.

XVII. *Urbanity to Parties and Witnesses.*

Art. 18. On the elicitation of testimony, whether from party or extraneous witness, it shall, on every occasion, be my special care to avoid inflicting on their feelings any unnecessary wound: to avoid giving to my discourse any such shape as to involve the assumption of delinquency in any shape, as having place in his instance; or be indicative of anger or contempt as having place towards him, in my breast; or of menace in the event of his comporting himself in a manner otherwise than in accordance with my wishes.

Of no power or influence attached to my situation, will I ever avail myself, to any such personal and sinister purpose, as that of creating dependance, or exacting, or receiving homage. To avoid wounding, by haughtiness of demeanour, the sensibility of such of my fellow-citizens, whose business brings them into communication with me, shall be among my sincere and constant cares.

XVIII. *Repression of Advocates', &c., inurbanity.*

Art. 19. Careful to avoid inflicting any such unnecessary wound on my own part, I will be no less so in repressing, as soon as observed, all such disposition on the part of any other person possessing any authority, or performing any part on the theatre of justice: to wit, any Quasi-Juryman or Registrar; any Government Advocate, or Eleemosynary Advocate, or Professional Assistant or Substitute to a party; or any gratuitous Assistant or Substitute to any party; or any extraneous witness, on the occasion of any question, proposed by him to be put to any other witness.

XIX. *Aid to Brother Judges.*

Art. 20. Where, on the occasion of a suit having its origin in the Judicatory of another judge, the function of eliciting evidence for the purpose of that same suit is committed to

me, I will use my best endeavour, by means of such evidence as I shall thereupon elicit, to complete the necessary and sufficient ground for such decrees and mandates, as the nature of the case may require, and for giving thereto, full execution and effect.

Where, for the purpose of eventual execution and effect to such decrees as he shall have seen reason to issue, on the occasion of a suit originating in his judicatory, any other judge has issued, for any purpose, a mandate, to which, for such purpose, it is necessary that execution, in part or in whole, be given within my judgeshire,—far from obstructing, my endeavours shall, in so far as needed, be applied to the facilitating of such execution: applying myself in aid of, and so far as requisite in concert with, such my colleague, by the performance of any such operations as may be necessary to the affording equal benefit to such judgeables, to whom it has happened to address themselves to his Judicatory, on the one part, and such to whom it has happened to address themselves to my own Judicatory, on the other.

XX. *Reasons, given to audience.*

ART. 21. So far as may be, without uneconomical expenditure of judicial time, I will on every occasion employ my best endeavours in affording to the surrounding audience in their quality of Judicial Inspectors, and to the Quasi-Jury on the occasion of a Recapitulatory Examination, a conception as clear, correct, and comprehensive as may be, of the nature of the case in hand, and of the considerations on which, in the character of reasons, the several operations performed by me in relation to it, are grounded.

XXI. *Legislation-regarding functions.*

ART. 22. On every occasion, I will pay due and solicitous attention to the Legislation-regarding functions allotted to my office: I will be on the watch for every occasion on which need has place for amendment to the text of the law, whether in respect of matter or of form: and wheresoever in other respects, a demand shall seem to me to have place for an eventual amendment, it shall be my care, to the best of my ability, so to frame it, as to render it, in as perfect a degree as may be, well adapted to its proper end, and intended purpose.

When applied to, for exercise to be given by me to the *preinterpretative* function, I will with indulgence submit to any such inconvenience, as may be the result of deficiency of appropriate instructedness, on the part of a consultant suitor: yet not so, as to concur with him in the uneconomical consumption of that official time, for the beneficial application of which, other suitors are in waiting; at the same time, in case of a purposed design on his part to give existence to such waste, it shall be my care to apply such appropriate punishment as may be needful for the repression of evil intention, seeking its accomplishment by such means.

Enactive.

ART. 23. The above Declaration will be made by every judge, and a similar one, in so far as it appertains to their respective offices, will be made by every Government and Eleemosynary Advocate.

Enactive.

ART. 24. A copy of the above Declaration, printed in the largest type, conveniently employable, and on one side only of the paper, with the signature of the judge or other functionary at length to every clause, and at the end, the date of the day when signed, shall be kept in the Justice Chamber, hung up in a conspicuous situation, so long as he shall continue in office.

SECTION XXXII.

Judges', &c., Securities for appropriate aptitude.

Enactive.

ART. 1. Principal and indispensable security, publicity of the procedure throughout the whole course of it from first to last. Exceptions, if any, minute in comparative extent; incidental and but temporary in duration: examinations, for example, productive of unnecessary and preponderant vexation, by disclosure of family or commercial secrets.

Instructional.

ART. 2. Instruments of publicity, the instruments of discourse in both its shapes—audible and visible—oral and written.

The theatre of Judicature, in form as well as dimensions, after the necessary regard paid to frugality, should be adapted to the reception and entertainment of the greatest number of persons that, in that state of comfort which is necessary to clear, correct, and complete conception, can receive at both inlets to the mind, (viz. hearing and sight,) information of what passes. In a country in which a corrupt benefit shared between the monarch and the judge is the actual main end of judicature, keeping the theatre of judicature as ill adapted as possible, to these its proper ends, is among the objects of a secret policy. For the judges, for their scribes, for the leading advocates, situations adequate in extent, sufficient for comfort, sufficient for sight and hearing, are provided. To jurymen, situations affording sight and hearing could not be refused: but, of the comfort that would be conducive to clear, correct, and complete perception, no inconsiderable share is commonly denied.

For advocates of minor account, a station, adequate to the reception of as many as can have need of attendance, on the occasion of

several successive causes, is provided. To an attorney and his clerk, for each of the parties to a cause, access neither could be, nor is, desired to be refused. These indispensable demands satisfied, the place left accessible to those of whose suffrages public opinion is composed, is in every point, form, extent, and comfort, kept in a state as ill-adapted as possible.

Ingress is not refused to the king's subjects —no indeed: in this sanctuary of justice, the omnipresence of the God upon earth being constantly manifested, exclusion put upon any the meanest of his subjects, would be a diminution of his glory. Ingress is not rendered illegal; God forbid it should: it is only rendered impossible.

Instructional. Exemplificational.

Art. 3. Persons by whose presence publicity, so far as effected by information received through oral discourse, is constituted, are:—

1. The scribe or scribes of the Judge as such.
2. The plaintiff's assistant with his scribe or scribes.
3. The defendant's assistant with his scribe or scribes.
4. During the extraction of oral testimony, the witness under examination: incidentally any other witness or witnesses purposely confronted with him.
5. The advocate or advocates, if any, occupied in affording their assistance to the several parties on both sides.
6. The attorney or attornies, if any, occupied in affording their assistance to the parties on both sides.
7. In a case where a quasi-jury is called in the quasi-jurors.

Enactive.

Art. 4. The above of *necessity:* necessity being created by the form of procedure above proposed.

To be addible for the separate purpose of publicity:—

In front of the Judge's seat, suitors with their witnesses waiting for their causes to come on. The line of seats nearest to that of the Judge, and thence the most commodious for sight, and hearing, to be occupied by those whose cause stands next in the list of causes. In the instance of a cause being appointed for a certain day, suppose it to be of the number of those which, while they afford considerable and extensive excitement to public attention, promise to occupy such a length of time as will naturally have for its natural effect, the deterring from attendance the parties whose cause stands next,—the quantity of space which, in ordinary cases, would have been occupied by the parties to the several suits, in their several turns, would thus exhibit a vacancy. For the filling up of this vacancy, tickets placed at the disposal of the parties to the appointed cause, and their agents, would thus afford a chance more or less considerable.

Instructional.

Art. 5. If in the nation, province, or district in question, in respect of number and mental cultivation taken together, the company thus divided—the section of the tribunal of public opinion thus constituted—be regarded as not sufficient, the eye of the legislator should be on the look out, for others competent in that respect to add to it. Of these distinguished members of that subsidiary tribunal—of these guardians of justice—the description would vary, according to the circumstances of the country, and the nature of its institutions. In a judicial district coextensive suppose with a parish, or containing in it parishes more than one, obligation suppose imposed by law, obligation of attendance by rotation, so far as such obligation can be imposed without preponderant vexation and inconvenience. In a town in or near which a military body of regulars has its station, attendance in like manner. In a nation, province, and district, having national guards, like attendance on the part of the officers of such guards. Title of the functionaries in question, guardians of justice.

Instructional. Exemplificational.

Art. 6. The following are the benefits sought to be promoted, and the evils excluded, with reference to the situation of Judge :—

Benefits and Virtues meant to be promoted.

1. Impartiality.
2. Incorruptibility, in a passive way.
3. Incorruptibility, in an active way.
4. Publicity in general.
5. Secrecy in appointed cases.
6. Unsolicitableness.
7. Abstinence from abuse of power, in Elections: viz. by usurpation of patronage.
8. Constancy of attendance.
9. Promptitude of despatch.

Evils and Vices meant to be excluded.

1. Partiality, through sympathy or antipathy.
2. Yielding to corruptive applications.
3. Solicitation of corruptive agreements.
4. Concealment, where adverse to justice.
5. Divulgation, where adverse to justice.
6. Inchoate partiality by admitting private solicitation.
7. Abuse of power, by usurpation of patronage.
8. Violation of duty, by non-attendance.
9. Dilatoriness, by indolence, negligence, or design.

10. Closeness and continuity of attention even to the smallest causes.

11. Punctuality of obedience towards the legislative law.

12. Certification of its imperfections, whenever observed.

13. Minimization of expense.

14. Non-partiality towards advocates.

15. Indulgence and assistance towards suitors.

16. Amiable and patient deportment towards all.

10. Inattention, particularly to small causes, thence precipitation.

11. Disobedience, as towards the law: viz. by misinterpretation, or arbitrary decision.

12. Creation, or permission of needless expense to suitors: so vexation.

13. Partiality towards advocates: contempt towards, and non-assistance, of suitors and their gratuitous assistants.

14. Insolence, contemptuousness, and proud deportment as to suitors and visiters in general.

15. Harshness towards delinquents, and persons accused of delinquency.

16. Assumption of superior virtue, on the ground of superior power.

Instructional.

ART. 7. Of the various other securities for appropriate aptitude, moral, intellectual, and active, whether *antecedential*, *concomitant*, or *consequential*, or say *ulterior*, see Ch. vi. LEGISLATURE, Section 31; Ch. ix. MINISTERS COLLECTIVELY, Section 25, and also the various Sections contained in this Chapter: more particularly Sections 14 to 18, and Sections 25 to 31.

Instructional.

ART. 8. Additional securities, applying not to the situation of the *Principal*, but only to that of the *Depute*, are the following:—

1. Power of the Principal to make, in relation to his own judicatory, general regulations as to the distribution of business, between Depute and Depute, as per Ch. xiv. JUDGE IMMEDIATE DEPUTES PERMANENT.

2. Power to a party to apply to a Depute permanent, to make reference to the Judge Principal, as to this or that particular point, as per Ch. xiv. Section 2, *Relation to Principal:* and in case of his refusing or omitting so to do, to apply to the Judge Principal for that same purpose.

3. Dislocability of the Depute by the Principal, as per Ch. xiv. Section 2.

Instructional.

ART. 9. The securities which apply to the situation of a Judge Depute permanent, apply to that of a Judge Depute occasional, except always, the concomitant security relating to *connexions:* for which, as regards the situation of Judge Principal, see Sections 16, 17.

Instructional.

ART. 10. Securities applying to the situation of Judge Appellate, and not to that of Judge Immediate, are the following:—

1. The proof of ulterior appropriate experience.

2. Ulterior proof of irreproachableness afforded by the additional scrutiny—to wit, by the antecedential security, afforded by the scrutiny, preparatory to the Judge Immediate's promotion to the situation of Judge Appellate.

Instructional.

ART. 11. Most of the securities which apply to the situation of Judge Immediate, apply to that of Government Advocate.

Ulterior securities are—

1. To any person that thinks fit, in consideration either of his own or any other private interest, or any public interest, power to apply to the Judge for his mandate, requiring the Government Advocate to act on the occasion in question, whether on the Pursuer's, or on the Defendant's side of the suit.

2. Add to this case the concurrent authority given to persons at large; viz. in the character of *informants*, and that of *pursuers*, in non-penal and *purely penal* cases: and in the character of persons specially wronged, and, as such, *co-pursuers*, in *publico-private penal* cases.

Instructional.

ART. 12. So, in the case of an Eleemosynary Advocate. To any person regarding himself as having a need of his assistance, or to any other person on his behalf, power to apply to the Judge, for his mandate, requiring the Eleemosynary Advocate to act as such, in behalf of such relatively helpless person.

SECTION XXXIII.

Judiciary Apparatus.

Enactive. Expositive.

ART. 1. By the Judiciary apparatus, understand the stock of things which, to enable the Judiciary Establishment to discharge its functions, require to be at the disposal of the Judges in their respective Judicatories, under the direction of the Justice Minister.

Expositive.

ART. 2. The articles of which this stock is composed, will belong partly to the class of things immoveable, partly to the class of things moveable: and to divers things immoveable, will be attached so many appropriate aggregates of things moveable.

Enactive. Expositive.

Art. 3. Belonging to each Judicatory, will be immoveable things following:—

1. Justice Chambers, one or several.

2. Repositories for Books and Papers, and materials for writing.

3. Official habitations, of any such Judiciary functionaries, to whom the Legislature shall have thought fit to allot such abodes at the public expense.

4. Waiting-rooms: and rooms for any such parties and witnesses, as, for prevention of sinister concert, it may on this or that occasion be deemed fit to keep in a state of separation from such or such other persons,—may for that purpose be provided.

5. Places of confinement attached to, or otherwise allotted to, the use of the Judicatory.

Enactive. Expositive.

Art. 4. Of moveable things belonging to each Judicatory, examples are as follows:—

1. The furniture of the Justice Chamber, or the several Justice Chambers.

2. The official habiliments or ensigns of the Judges, and such other of the actors on the judicial theatre, to whom distinctive habiliments or ensigns of office are allotted.

3. The arms of such judicial officers by whom, on occasion, the bearing of arms of any kind, comes to be necessary to enable them to exercise their respective functions.

4. Instruments of repression applicable in case of necessity to the bodies of refractory persons, in the exercise of the sedative function.

5. Instruments of punishment.

6. Instruments of communication and conveyance, in so far as any are employed in the conveyance of persons or things, applied to the purposes of judicature.

Section XXXIV.

Justice Chambers.

Expositive.

Art. 1. By a Justice Chamber, understand a Chamber in which judicial suits, and other judicial applications are heard.

Enactive.

Art. 2. In each Judicatory, if, besides the Judge Principal, there be one or more Judge Deputes, sitting at the same time,—to each such Depute must of course be allotted a separate Justice Chamber, during that same time.

Instructional.

Art. 3. These same Supplemental Justice Chambers, may be either *appropriated*, or *occasional*: appropriated, are all such as by original construction, purchase or hire, for a term certain, stand allotted to this purpose.

Instructional.

Art. 4. An Occasional Justice Chamber, will be every apartment, in which, by reason of deficiency in the number of appropriated Justice Chambers, a Judge Depute, whether permanent or occasional, at the time, holds his sittings.

Enactive.

Art. 5. Every Justice Chamber of the Immediate Judicatories will be provided at the expense of the Sub-district, those of the Appellate Judicatories at the expense of the District: in both cases by the Sub-legislature of the District, in concert with the Justice Minister.

Enactive. Instructional.

Art. 6. On whatever occasion, any apartment is employed as an Occasional Justice Chamber, it will be the care of the Registrar, under the direction of the Judge Principal, to cause it to be fitted up, and stocked, in so far as may be without preponderant addition to the expense, on the same principle, and in the same manner, as the Principal Justice Chamber.

Enactive. Instructional.

Art. 7. So order matters, that between every person to whom, for the exercise of his right, it is needful to hold converse with any other,—he may with the greatest facility hold converse with every such other: and this without disturbance to the business of the place.

Enactive. Instructional.

Art. 8. So order matters that of the discourse held in the chamber between one person and another, all opportunity of concert for a sinister purpose be as completely as possible excluded.

Enactive. Expositive. Instructional.

Art. 9. In this view, consider on what occasions, for what purpose, and between what persons, such intercourse will naturally be subservient to the purposes of justice.

Consider, moreover, on what occasions such intercourse may naturally be liable to be repugnant to the ends of justice.

As between actor and actor on the judicial theatre, what will generally be necessary is, that in the judicatory itself, they should incidentally hold communication with one another: what, exceptions excepted, does not seem to be necessary in any case is—that the matter of that communication should be a secret to any of the others: for publicity, there is the general reason—prevention of concert, for the purpose of promoting private interest at the expense of public.

1. The Judge might seek to bring over the Jury to his purposes, by considerations which, being addressed to their prejudices and pas-

sions, shame would prevent him from submitting to a more enlightened part of the company present, such as his comrades in office, and the professional section of the Judicial Inspectors, and this or that one among the miscellaneous portion—the suitors waiting for their turns.

2. By concert with his comrades in office—the Registrar, the Government Advocate, and the Eleemosynary Advocate, he might indulge in a greater degree of despatch than would be consistent with a due regard for the main and direct ends of justice.

Expositive. Instructional.

ART. 10. Of the aggregate company of those actors, one class there is in whose instance prevention of secret intercourse will frequently be an object of particular importance: this is, during the period of elicitation, that of the witnesses whose interests and affections are on the same side: in this case, the evil to be obviated, is information given by a party witness to another, either during examination or antecedently to his examination.

On the occasion of suits styled criminal, there is in general no want of disposition to employ precautions of this sort. But the demand for them is frequently not less urgent, in cases styled civil, in which no party on either side is exposed to any suffering that bears the name of punishment. But as in a case of this sort, the amount of the largest mass of property may be at stake,—there exist no other bounds than those which limit this property, to the magnitude of the bribe, which he who stands in need of an article of mendacious testimony may be willing to give, and he in whose power it is to furnish it, be no less willing to receive. Here then is an instance, among so many others, in which difference in respect of precautionary arrangements, should not be too blindly and absolutely determined by the distinction expressed by the words penal and civil, in regard to suits.

Enactive. Instructional.

ART. 11. Legends for the Justice Chamber, printed in large placard types, should be hung up in every Justice Chamber whenever so employed:—

Examples of such Legends are—

1. Greatest-happiness principle.
2. Ends of Justice.
3. Truth-securing monitions.
4. Warnings against falsehood.
5. Elementary functions of Judge and Quasi-Jury.
6. Judge's Deportment Rules.
7. Suitor's Deportment Rules.
8. Judge's Inaugural Declaration, (if not too long.)

Enactive. Instructional.

ART. 12. In the construction and arrangement of a Justice Chamber, the following considerations and rules should be kept in view:—

1. Maximize the number of those by whom everything that passes can be heard.
2. Maximize the number of those by whom everything visible that has place or passes can be seen.
3. Maximize the convenience and comfort of the several actors on the theatre, according to their respective functions and stations.
4. If all cannot in equal perfection exercise the faculty of hearing, let it be exercised by those in whose instance it is of the greatest importance to justice that it be exercised.
5. So in regard to the faculty of seeing.

Note, that from the sight, the hearing, and thence perception and conception in all their parts, receive assistance.

6. Convenience includes not only the faculty of occupying the situation in question, without annoyance, but with it the faculty of making to the best advantage application of what has been seen and heard: and in particular the faculty of minutation.

Instructional.

ART. 13. Stations which may with propriety be elevated are—

1. The Judge's.
2. The Registrar's.
3. The Quasi-Jury's.
4. The Government Advocate's.
5. The Eleemosynary Advocate's.
6. The Pursuer's.
7. The Defendant's.
8. The Witness's.

Instructional.

ART. 14. While contributing to the examination of witnesses, the Government and Eleemosynary Advocates' stations might be under the Judge's. While addressing the Judge, opposite to the Judge's.

In the area of the Justice Chamber may perhaps be to be included, steps into the several elevated stations on each side.

Enactive.

ART. 15. Opposite to the elevated seats, as per Art. 13, will be less elevated seats for visiters. Each seat has a slight back for support of the individual sitting; and a desk for him to lean and occasionally write on.

Enactive.

ART. 16. A box or boxes will be provided for the waiting witnesses belonging to the suit which is being heard. These might be either distinguished from the visiters' seats, in which sit the parties and witnesses belonging to other suits, together with the Probationary Lawyers, or not.

Enactive.

ART. 17. For visiters at large, galleries should be erected on each side of the area, and at right angles to it.

Section XXXV.

Judiciary Habiliments.

Instructional.

Art. 1. As instruments of discrimination, not as traps to catch respect, are peculiar habiliments here meant to be allotted to judiciary functionaries.

Enactive. Instructional.

Art. 2. As instruments of discrimination: that on every occasion, each by every other actor on the judicial theatre, (casual visiters included,) may, at first glance, be seen to be, in respect of official situation, or occupation, what he is; and not regarded as being in any such respect what he is not.

By the word distinction, a conception opposite to that intended might have been conveyed: for, in the English language, distinction, though originally meaning nothing more than discrimination, is come to denote a source of respect.

Instructional.

Art. 3. By this means, whosoever has need of service in any shape, at the hands of a member of any one of these classes, sees at once, and without loss of time in inquiry, or danger of mistake, the individual from whom such service can be obtained: the characteristic habiliment is as a sign to a shop.

At the same time, with equal rapidity, if any deviation from the appropriate course of action, belonging to each actor on the scene, should, in the instance of any one of them, take place, observation may be made of it by every other.

Enactive. Instructional.

Art. 4. Not as a source of respect. In this character, a distinguishing habiliment would either not operate at all, or operate as an instrument of delusion—an instrument of factitious dignity. In this case, as in every other, an enemy to all natural, is all factitious dignity, of whatsoever appendages composed: it operates as a bounty upon, an encouragement to, and a cause of, misbehaviour. Keep excluded all such marks, and every individual is judged according to his works: apply those marks, every individual is judged otherwise than according to those same works: he is judged according to the works looked for, at the hands of all individuals, belonging to that same class.

Of all the classes here in question that of the Judge's is the only one,—in the instance of which, under a system such as that here proposed, the effects of any such delusion would be apt to be productive of any considerable mischief. But for the caution here given, long flowing robes, such as among civilized nations have been in use to be thus employed, would naturally be allotted to the functionaries of the higher grades. In so far as these marks of distinction have had their intended effect, they have procured for the worst man the same quantity of respect as for the best.

Instructional.

Art. 5. Respect, in a proportionate quantity on the one part, will, by the nature of man, be among the inseparable consequences of power on the other. So likewise with respect to appropriate intellectual aptitude, in whatever shape, it cannot fail to be possessed by every one to whom it can happen to have been located in the situation of Judge. But by the sort of certificate afforded by habiliments, of a form and texture similar to those customarily worn by persons belonging to this class, his habitual good behaviour will be certified as being at least equally good with that of an average man of that same class: and of this certificate every unapt individual will avail himself in such sort, as, without fear of consequences, to indulge in the practice of those pernicious habits, to which, by the possession of the power belonging to that commanding situation, he stands exposed. By haughtiness of demeanour, it will be his endeavour to maximize the quantity of respect bestowed on him by all who are subject to his power: and whatsoever is claimed by *apparent* knowledge, is naturally conceded by self-conscious ignorance.

Instructional. Exemplificational.

Art. 6. In English practice, for the production of every good effect producible by judicature, no peculiarity of habiliment is necessary. If not the highest, the Privy Council is among the highest among English judicatories. Sitting on the judgment seat, no habiliments does a Privy Councillor wear, distinct from those which are worn by other gentlemen.

At the Quarter Sessions of the Peace, sit, amongst other gentlemen, members of the House of Peers, none of them wearing any other than their ordinary dress.

Enactive.

Art. 7. If gowns are employed, the difference between that of the Judge and that of the Law Practitioner, should be conspicuous. Colour of the Judge's plain; that of the Lawyer's, party-coloured. The Judge's rather brown than black: black gives an air of gloom and severity, rendering the wearer an object rather of terror than of amiable regard.

Functionary Advocates should, in this way, be distinguished to the eye, from the non-functionary ones.

In every instance, the costume of the Deputes, whether permanent or occasional, should be the same as that of their respective Principals.

Enactive.

Art. 8. For the Quasi-Jurors, discriminating habiliments, such as to cover their ordinary garments, are provided at the public expense.

In this way, the comparatively indigent members will be preserved from contempt: and their comparatively opulent colleagues, and the other actors on the scene, from disgust.

Enactive.

Art. 9. Common to all functionaries, a sash, with a legend, indicative of the particular function, in a different colour. Section xxxvi. *Prisons.**

CHAPTER XIII.

Judges Immediate.

Section I.

Night Attendance.

Enactive. Expositive.

Art. 1. Of cases presenting a demand for night attendance, examples are the following:—

1. A person—charged with, or suspected of, some crime, to the judicial pursuit of which, provisional confinement of the person is deemed necessary,—is apprehended and brought before the Judge: need thereupon has place for lodging him or her, until the hour arrives for day attendance, in some place and manner, suitable to what, from appearances, may be supposed to be his or her condition in life, and accustomed habits: and *that* in such sort, that no avoidable annoyance from incongruous association may ensue.

2. A course of criminality injurious to person, or property, or both, is going on at the time: for giving termination to it, the presence of the Judge on the spot is deemed necessary.

3. So, any calamity, for the prevention or termination of which, the ministry of the Judge is capable of being employed more speedily or more effectually than that of the *Preventive Service Minister.*

Enactive.

Art. 2. Of the Registrar, the functions are, on this occasion, exercised by the Judge. Under appropriate heads, he makes a minute of what passes: in the course of the next day, exemplars of it, for distribution, are made of it, under the care of the *Registrar:* name of the book in which the operations performed in the performance of night duty are entered, together with such instruments as are the result of those same operations, the *Night Register.*

Enactive.

Art. 3. Out of the matter entered in the *Night Register, Night Attendance Registers,* weekly, monthly, and annual, corresponding to the *Day Attendance Registers,* (as per Ch. xii. Judiciary collectively, Section 25, *Attendance,*) will be made out by the Registrar, and his signature thereto attached. Of the presence of the Judge in the *Night Justice Chamber,* as per Art. 4, attestation will be made by his signature, as per Ch. xii. Judiciary collectively, Section 25, *Attendance,* and by the co-attesting signature of the doorkeeper written in the Night Chamber, in the presence of the Judge, at the conclusion of the Night duty attendance.

Enactive.

Art. 4. *Night Justice Chamber.* For the performance of the Night duty, lest, in the time generally allotted to repose, exercise of judicial functions for cases of urgency be wanting, attached to every Immediate Judicatory is a *Night Justice Chamber,* in which the Judge, or some Depute of his, passes the night. What is expected is, not that he shall, throughout the night, keep himself awake: only that, for the purposes of his duty, he shall be liable to be awakened.

Enactive.

Art. 5. With or without the intervention of a court, the door of this night chamber opens into the street. Attached to it on the outside, is a *watch-box,* in which a ministerial officer, or succession of ministerial officers—to wit, a doorkeeper or doorkeepers—relieving one another, whose duty it is to keep awake, are stationed for the night. Over the door is an inscription, in conspicuous characters—*The Judge's Night Chamber,* illuminated during the whole of the requisite time by a lamp. On one side of the door, in a tabular form, in like characters, and in like manner, illuminated, is a placard containing and intituled—*Rules concerning admission on night business.*

Expositive. Instructional.

Art. 6. Of the manner in which night duty may be performed with least inconvenience to the functionary, an example is as follows:—

By a partition glazed and grated, and a curtain attached, that part of the chamber in which the bed is stationed, is separated from the entrance part. Of the glazed frame, the upper part is made to slide down, and the curtain is undrawn, when any person makes his appearance before the Judge. To persons coming in a peaceable manner, and, without annoying clamour, desiring to be heard on business that would suffer by delay till day time, admittance will be given to one, or, upon occasion, two at a time, by the Doorkeeping Watchman, as far as to the partition: if armed, into his custody their arms must first have been delivered. So, to persons, after lawful prehension thus

* No MSS. having been found relating to Prisons, which was the title given by the author, to Section 36, in the Table of contents, printed during his lifetime, the reader is referred to the author's comprehensive work on that subject, entitled, Panopticon, in vol. iv. of this collection.—*Ed.*

adduced, to the end that they may be disposed of as per Art. 1.*

Section II.

Out-Door Attendance.

Enactive.

Art. 1. On whatever occasion, for giving execution and effect, in the most apt manner to the law, it is become necessary or desirable that at a distance from the Justice Chamber the Judge Immediate, in person, or by some apt Depute, should exercise any of his functions,—he is bound to do so. The duty which, on such occasions, he performs, is styled *the Judge's Out-Door Duty.*

Ratiocinative. Expositive. Instructional.

Art. 2. Of the *purposes* for which it may be necessary or desirable that out-door duty should be performed, examples are as follows:—

1. Maximizing the instructiveness of evidence.
2. Preservation of evidence from deperition.
3. Prevention or termination of damage by delinquency or calamity.

Ratiocinative. Instructional.

Art. 3. Purpose I. *Maximizing the instructiveness of evidence.* The instructiveness of evidence is at its maximum, when the perceptible objects which enter into the composition of the grounds of the Judge's decision, have come under the cognizance of his senses. As in the case of any other person, so in the case of the Judge,—only in default of the faculty of taking such cognizance, or for the purpose of making known to the superordinate authorities the grounds on which he acts, can the decision, consistently with the due regard to the ends of justice, direct and collateral together, be placed on the comparatively inferior ground constituted by reports, made by *other* persons in the character of witnesses.

Ratiocinative. Instructional.

Art. 4. In relation to one of the two direct ends of justice, to wit, *avoidance of misdecision,* —the advantage gained by performance of *out-door* duty,—that is to say by *migration* to the spot in question, for the purpose of *inspection,*—consists in the difference in point of instructiveness, between the ground on which the decision rests in the two opposite cases: to wit, 1. where the conception formed by the Judge, in relation to the object in question, has for its sole ground a report or reports made to him by some other person or persons, to whose senses, in so far as their declaration is correct and complete, the object did, at the time and place in question, present itself;—2. where his conception has for its ground the impression made by that same object on his own senses.

Expositive. Instructional.

Art. 5. Of the case in which performance of out-door duty may be necessary to the ac-

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* Of the bed on which the Judge reposes, the feet are towards the entrance. On each side of the two sides and at the feet, rises a board in a vertical direction: on the two boards at the sides, slides, in an horizontal direction, another board called the *bridge*, performing the office of a table. On this table lie the materials for writing, together with any books or papers of which there may be need. To exercise his function, the Judge has but to sit up in this bed.

To many a person in whose conception suitors were made for Judges, not Judges for suitors, that a functionary whose dignity is that of a Judge, should, for the performance of any part of his duty, be for any part, how small soever, of the year, habitually liable to be waked out of his sleep,—may appear altogether unendurable. Better that wrongs of all sorts remain without remedy, or multitudes remain sleepless all night long, in a state of mutually distressing intercourse, than that on the part of any such compound of learning and dignity, exposure to any such suffering should ever have place. A physician, yes: a generalissimo, yes: any person imaginable, other than the image of God, the King, or the image of the King, a Judge.

Of this note and some of the preceding articles, the object being to put objectors to shame, by showing to how inconsiderable an amount the inconvenience is in this case capable of being reduced,—the same sort of person by whom, without such indication, the alleged intolerableness of it would be stated as a peremptory bar to the proposed institution, would, if this note, with the alleviation indicated by it, had formed part of the text, have employed his ingenuity in representing it as ridiculous, and as forming in this way an adequate ground for rejection and contempt. The whole remainder of the proposed Code being disposed of by silence, an article such as this, would in that case have been held up to view in the character of an adequate specimen of it. The argument here supposed, is no other than one, to which, some five and six and thirty years ago, it actually happened to be exemplified, on the occasion of an arrangement of a slightly different nature, to which the one here in question is now substituted. The fallacy being thus characterized and exposed *in utero*, fear of shame may perhaps in some instances suffice to render it abortive.

As often as, in relation to any subject, a plan, or any component arrangement belonging to it, the utility of which is to such a degree manifest and incontestable, that no argument deduced from the greatest-happiness principle, can be found to oppose to it,—of this complexion are the devices which sinister interest, interest-begotten prejudice, and authority-begotten prejudice, concur of course in playing off against it. In this way are reviews conducted in England. Not so in France: there, the fault lies rather on the opposite side.

After the lapse of a certain number of ulterior centuries, or so long as man is man, is it possible that, by the intervening conjunct course of melioration, moral and intellectual, disingenuousness in argument shall have been set to rest?

complishment of this purpose, the subject matter of inspection being, in all three cases, a thing *immoveable*, examples are as follows:—

1. Where the boundaries between the property of one person, and that of another, are to be ascertained or adjusted.

2. For the purpose of compensation, where the amount of damage produced on a certain spot by physical or human agency, is to be ascertained.

3. Where the question, whether a contract, of which a certain spot has been the subject, has or has not been duly performed, is to be determined.

Ratiocinative. Instructional.

ART. 6. The Judge by whom the decision is framed, must be the same Judge by whom the visit to the spot has been made, or the advantage in question will not have been reaped: if it be by the Judge Principal that the decision is to be framed, by the Judge Principal must the visit have been made: if it be by a Judge Depute, by that same Judge Depute. A case may indeed be, in which it may be of advantage, upon the whole, that the visiting and inspecting Judge, be a person other than the deciding Judge; but in this case the advantage, if any, will consist in the superiority in respect of trustworthiness on the part of the report made by the visiting to the deciding Judge, in comparison of the report that would have been made by other alleged percipient witnesses, or in the addition made by the report of that same visiting Judge to the reports made by other alleged percipient witnesses.

Expositive. Ratiocinative. Exemplificational.

ART. 7. Purpose II. *Preservation of evidence from deperition.* Of the cases in which performance of out-door duty may be necessary to the accomplishment of this purpose, examples are as follows:—

1. Of the proposed witness the testimony being necessary to rectitude of decision, he is not capable of coming of himself on *accersition*, or of being *adduced* to the Justice Chamber, without danger of death, or serious and lasting detriment to health: as where, for conviction of a murderer or intended murderer, necessity has place for the elicitation of testimony from the lips of the person wounded by him: and so, for whatsoever purpose the testimony happens to be needed: whether for proof of a *wrong* in a *penal* case, or for proof of a *right* in a *non-penal* case.

Expositive. Ratiocinative. Exemplificational.

ART. 8. 2. A ship on the point of sailing. The testimony of certain proposed witnesses, on the occasion of a suit, penal or non-penal, being indispensable, they cannot, in the requisite number, during the time necessary for the journey to and fro, with the intervening demurrage, quit the ship, without danger of destruction, or of preponderant damage thereto, or to the value of the cargo to the freighters. By the journey of the Judge to the ship, the time of the journey, and more or less of the demurrage, as well as all danger to ship and cargo, will be saved.

Expositive. Ratiocinative.

ART. 9. Purpose III. *Prevention or termination, or say suppression, of damage, by delinquency or calamity.* For examples of such damage, see Ch. xi. MINISTERS SEVERALLY, Section 5, *Preventive Service Minister.* Of the Judge's out-door attendance, so far as regards delinquency, the exercise will be no other than that exercise of his *sedative* function, as per Ch. xii. JUDICIARY COLLECTIVELY, Section 11, extended to *out-door* cases. The reasons for the imparting to the judicial department this branch of power are—that, in a case of such emergency, it may happen that the ministry of a Judge may be capable of being employed more promptly than that of a *Preventive Service Minister*, or of any subordinate of his: and that, by the superior authority of the Judge, the requisite physical co-operation of persons at large may be more effectually obtained, than by the authority of any inferior functionary in the Preventive Service subdepartment.

Instructional.

ART. 10. Where the subject matter of inspection, be it a person or a thing is not physically, or as per Art. 7, prudentially incapable of being adduced to the Justice Chamber, the question will arise—*Object to Judge, or Judge to object? Object to Judge*, will of course be the general rule: *Judge to object*, a case of exception. To give a detailed description of the exceptions proper to be made belongs to the penal and non-penal codes, with the Procedure Codes thereto respectively attached.

Instructional.

ART. 11. To the same Codes, will belong the task of framing arrangements, having for their object, in cases where, for the making of such visitation, expense is necessary, the making provision for such expense: taking at the same time the requisite precautions for preventing, on these occasions, the undue consumption of the public time and money, by application made thereof to private purposes.

Enactive.

ART. 12. Under the care of the Registrar, on the occasion of each visit, is framed and kept the Judicatory's *Incidental Out-door Register:* to wit, under the heads following, together with any such others as may come to be prescribed in the Penal and Non-Penal Codes.

1. *Time*—to wit, year, month, day of the month, and day of the week.

2. *Purpose* for which the visit was made.

3. *Place* to which, at each time, it was made.

4. *Mode of conveyance.*

5. *Time of outset:* hour and minute.

6. *Time of arrival* at the spot: hour and minute.

7. *Business done there.* Things in question, if any, seen.

8. *Persons,* if any, inspected or interrogated, or both.

9. *Time of return* to the Judgment Seat: day, hour, and minute.

10. *Judicial functionaries* occupied in the visit: attested by the initials of their respective names, in their respective hands.

11. *Parties* occupied in the visit, if any.

12. *Professional assistants,* if any, of the several parties, with their respective names and places of abode, written by them respectively at length, and mention made to what parties they were respectively assistants.

13. *Extraneous witnesses,* if any; adduced for example, or accersed for explanation of local appearances on the spot, with attestations in like manner.

Enactive.

Art. 13. Out of the several *Incidental Out-door Registers,* the Registrar will frame, keep, and keep hung up, weekly, monthly, and annual *Out-door Attendance* Registers, and employ the matter in the formation of the *Individual Service Calendar,* as in the case of the *Home Attendance Register,* as per Ch. xii. Judiciary collectively, Section 25, *Attendance.*

Instructional.

Art. 14. For other matters, see Ch. xii. Judiciary collectively, Section 25, *Attendance.*

CHAP. XIV.

Judge Immediate Deputes Permanent.

Section I.

Fields of Service.

Enactive.

Art. 1. Exceptions excepted, coincident with both fields of service, of the Judge Principal, are those of every Judge Depute permanent.

Enactive.

Art. 2. Exceptions. 1. To a Judge Depute permanent, belongs not the power given by Ch. vi. Legislature, Section 2, to the Judge Principal: namely that of representing an act of the Legislature as being anticonstitutional.

2. Nor the power of locating subordinate functionaries, as per Ch. xii. Section 8, saving in case of urgent need to the senior in service, on the death of the Judge Principal, and for a time ending with the location of a successor.

3. Nor the power of dislocating such functionaries, saving in case of urgent need.

4. Nor the power of exercising the self-suppletive function as to his own office.

Enactive.

Art. 3. To every Depute permanent passes of course along with the instrument of deputation, the *executive* function, subject, so long as the suit continues in that same Judicatory, to the direction of his Principal.

Enactive.

Art. 4. So likewise as to all ministerial subordinates, the *directive,* so far as necessary to the exercise of his above-mentioned *executive* function: as also the *suspensive.*

Enactive.

Art. 5. So likewise as to all *things,* the use of which is necessary to the exercise of his other functions, the *custoditive* and *applicative;* but not the *procurative* or the *eliminative.*

Enactive.

Art. 6. So likewise as to all persons subject to the exercise of his *directive* function, the *inspective.*

Enactive.

Art. 7. So likewise as to all things subject to the exercise of his *custoditive* and *applicative* functions, the *inspective.*

Enactive.

Art. 8. So likewise as to persons, things, and judicial proceedings and occurrences, by and with the instrumentality of the Registrar or his Deputy, on the several occasions respectively located, the *minutative* and *recordative* function.

Enactive.

Art. 9. So likewise as to states of things, ordinances and arrangements, the *meliorative-suggestive.*

Enactive.

Art. 10. The instrument of location, with the year, month, and day of the month, is signed by the Principal, and, in token of acceptance, by the Depute. Exemplars are disposed of as follows:—

1. Deposited under the care of the Registrar in the Judicatory, one.

2. In the case of an Immediate Judicatory, transmitted forthwith to the Registrar of the Appropriate Appellate Judicatory, one.

3. Transmitted forthwith to the Justice Minister, one; as to whom, see Ch. xxiv.

4. Delivered to the locatee, one.

5. Kept by the locator in his individual capacity, one.

Enactive.

ART. 11. The Principal and his Deputes permanent as well as occasional, in any number, are expected to act as far as occasion demands at the same time.

SECTION II.

Relation to Principal.

Enactive. Expositive.

ART. 1. At the requisition of the Judge Principal, a Depute permanent is at all times bound to commence his sittings at the place, day, and hour, in and by the instrument of requisition prescribed: and, in the fulfilment of such his duty, as the occasion requires, to continue any number of hours, not exceeding that prescribed in Ch. xii. JUDICIARY COLLECTIVELY, Section 25, *Attendance:* it being understood that the Depute is not bound to do judicial service, other or more severe than that to which the Judge Principal is himself bound.

Enactive.

ART. 2. If, without just excuse, after such requisition received, with time sufficient for compliance, he omits to attend and serve, or departs before the appointed time of service is expired, entry of such his default will be made by the Registrar in the Register of the day, and the defaulter will stand compensationally and punitionally responsible. As to excuses for non-compliance with judicial mandates on the part of public functionaries, see the Procedure Code.

Enactive.

ART. 3. By any confirmation, expressed or implied, given by the Judge Principal to the proceedings of the Judge Depute, it is not to be understood, unless so expressed, that he has taken personal cognizance of such proceedings, or any of them: all that is meant is —that, by him, nothing erroneous in them has been known, or suspected to have had place. For error, in the proceedings of the Depute, appeal to the Judge Appellate affords the same remedy, as for the like in the proceedings of the Principal.

Enactive.

ART. 4. For relief against oppression of a Judge Depute permanent by his Principal, appeal lies to the Appellate Judicatory.

Instructional.

ART. 5. Oppression in a particular shape—constituting an *abuse*—in which the guarding against it is attended with a particular degree of difficulty,—is this,—

To the fulfilment of Deputes' service time, (two years, as per Ch. xii. JUDICIARY COLLECTIVELY, Section 28, *Locable who,*) and thence to his locability in the situation of Principal, the Principal to an unlimited extent applies undue *retardation*, namely, by purposed forbearance to assign to him his due proportion of the aggregate number of suits.

Instructional.

ART. 6. Inducements, adequate to the production of this injustice, are at all times in the nature of man and things: 1. ill-will, for example, towards the Depute in question: 2. undue partiality in favour of this or that other Depute: 3. jealousy of superior talent, or appropriate aptitude in some other shape, in the instance of this same Depute: 4. on the part of the Judge Principal, desire of recommending himself to the favour of the superordinate locating functionary, namely, the Justice Minister, or any other high functionary, under the notion of the Depute's being to them respectively an object of disfavour, well or ill grounded, or a rival Depute, of undue favour.

Instructional.

ART. 7. Such being the abuse, now as to the remedy. Two obvious ones present themselves: *rotation* and *lot*. But by either of these, the public service in this shape might be left exposed to detriment in an unlimited degree: namely, by inaptitude on the part of a Depute to a corresponding degree.

Instructional.

ART. 8. Although against abuse in this shape, scarcely does the nature of things admit of any completely effectual remedy; yet the following palliatives will be seen to be of no inconsiderable efficacy, and quite sufficient to preserve the institution of Deputeship against rejection.

1. The Depute submits to the injustice, till the migration of the unjust Judge Principal into another judgeshire, as per Ch. xii. JUDICIARY COLLECTIVELY, Section 17, *Migration*, takes place: of which migration, the time cannot be later than three years, and may have place at any day.

2. The Depute himself migrates into another Judgeshire. If in the Judicatory in question his conduct has been irreproachable, no considerable objection to his aptitude in any shape having become apparent, complaints against him on the part of his Principal, will have the effect of drawing attention to his suffering, the rendering him an object of sympathy, and the engaging the Judge of this or that other Judgeshire, to make choice of him for Depute.

3. On the ground in question, the Depute makes his appeal to the Judge Appellate of the Judicatory, or to the Justice Minister; who thereupon, if he thinks fit, addresses to the Principal an admonition or recommendation, having for its object the application of the appropriate redress.

4. Through the medium of the Press, the Depute makes his Appeal to the Public-Opinion Tribunal.

Instructional.

Art. 9. As to the two last of these remedies, such is the natural uncertainty of their success, and such, on that and other accounts, on the part of a party injured, the natural reluctance to having recourse to them, that such recourse does not present itself as likely to be, in any considerable degree, frequent. But of the eventual recourse to one or other of these four remedies, the existence of an effective apprehension on the part of every Judge Principal, presents itself as being, in every instance, in a high degree probable: and that in such a degree of strength, as to be sufficient for confining the abuse within bounds as narrow as the nature of man, in any case, admits of.

Enactive.

Art. 10. *Judge Principal Depute's Service-regulating function.* In the exercise of his Eventually-emendative function, subject to the control and direction of the Appellate Judicatory and the Justice Minister,—each Immediate Judge Principal, from time to time, by the light of experience, frames regulations respecting the manner in which the various portions of the business of his Judicatory, as determined by the species of suit, shall be distributed among the several Judge Deputes permanent, attached to that same Judicatory.

Enactive.

Art. 11. No judicial business will remain unproceeded upon, so long as there exists upon the list a Judge Depute permanent, by whom proceedings thereupon can be carried on.

Enactive.

Art. 12. If, at the same time, there be divers persons in waiting, each of them in the character of an applicant,* to give commencement to a suit, and at the same time divers Judge Deputes permanent, within call and unoccupied, the several applications will be distributed among them by lot, saving such choice as the Judge may see reason to make for special cause assigned.

Enactive.

Art. 13. When, in any Judicatory, by any cause whatsoever, a vacancy has been produced in the situation of Judge Principal,—the Judge Depute permanent, if there be but one, or if more than one, the senior in service, as per Ch. xii. Section 29, *Located how*, takes his place: and, until the vacancy is filled up, by the presence of a successor, occupies it, but without the pay.

Enactive.

Art. 14. So, in case of any temporary disability of the Judge through sickness, or any unexpected prolongation of his stay upon distant *out-door* service.

Enactive. Instructional.

Art. 15. At the request of a party on either side, or of his own motion, any particular point may, by a Judge Depute permanent, be referred to the cognizance of the Judge Principal: but it will be for the care of the Judge Principal and that of his Judge Appellate, that such reference be not made to have the effect of an engine of preponderant delay, vexation, or expense.

Enactive. Instructional. Ratiocinative.

Art. 16. Forasmuch as Appeal will lie, from the decisions of the Judge Depute, as well as from those of the Judge Principal, appeal to the Judge Principal is not allowed from any decision of the Judge Depute, lest such interposed stage of appeal should be employed as an engine of undue delay, vexation, and expense. But if, in a case of doubt and difficulty, request of any such reference, as in Art. 15, be made,—and, in the *declared* opinion of the Judge Depute, such reference may be made without preponderant delay, vexation, and expense—he will do well to comply with the request: mention thereof, and of the consequent compliance or non-compliance, will of course be entered on the record.

Enactive. Ratiocinative. Instructional.

Art. 17. As when it is before the Judge Principal, so when it is before a Judge Depute permanent, that the suit has been commenced, —after the *original inquiry*—a recapitulatory inquiry will have place, in any of the cases mentioned in Ch. xvi. Quasi-Jury, Section I, *Fields of Service.* On this second inquiry, the Judge Depute should in general be the same as on the first: because, to any second Judge the evidence that had been elicited on the first inquiry, cannot otherwise present itself in the most apt shape, unless the percipient witnesses be examined over again, by which correspondent delay, expense, and vexation must be produced. Nevertheless, for preponderant reasons assigned, the Judge Depute permanent may, on this occasion, of his own motion, transmit the recapitulatory inquiry from himself to the Judge Principal, who, in such case, will either perform the inquiry himself, or transmit it to some other one of his Judge Deputes permanent: and, on the application of any party, with or without reason assigned, it will in like manner be transmitted to the Judge Principal. But in this case it will be for the Judge Principal to consider, whether the application had

* [Applicant.] In the Code of Procedure belonging to this *Pannomion*, no person is received in the character of a *pursuer*, till, on a personal application made by or for him, at the judicatory, and a statement made subject to interrogation, and under an appropriate penal sanction, in case of falsity,—he has in so far afforded security against its being groundless, or frivolous and vexatious. See Procedure Code, Ch. viii. Section 2, (vol. ii. p. 42.)

not for its cause, a hope entertained of the deception capable of being produced by the comparatively unapt shape of the first edition of the evidence; and if yes, to declare such his opinion or suspicion, and act accordingly, on the occasion of his decrees.

Enactive.

ART. 18. *Contested-interpretation-reporting function.* When the ultimate decree, on the occasion of which—the demand for a legislative interpretation presents itself, is the decree of a Judge Depute, he it is by whom, if at all, this function will have to be exercised. But, in this case, the *report* must, at or before the time of its being transmitted to the Judge Appellate, be transmitted to the Judge Immediate Principal, for the purpose of receiving any such observations as he may think fit to add, before his *fiat* is attached to it.

Enactive.

ART. 19. *Eventually-emendative function.* By a Judge Depute permanent may this function also be exercised. But in this case, likewise, the proposed amendment must, at or before the time of its being transmitted to the Judge Appellate, be transmitted to the Judge Immediate Principal, to receive his observations, as above.

Enactive.

ART. 20. *Sistitive function.* By a Judge Depute permanent may this function also be exercised. But in this case, *exceptions excepted*, the mandate must be countersigned by the Judge Principal, or his substitute, in case of vacancy, or in case of sickness or distance from the judgment-seat, as per Ch. xii. JUDICIARY COLLECTIVELY, Section 10, *Self-suppletive function.*

Exception is where, before the decision of the Judge Principal, or of such his substitute, could take effect,—irreparable damage would probably ensue: in which case, a clause giving indication of the damage, and of the evidence on which the apprehension of it is grounded, must be inserted in the appropriate mandate.

Enactive.

ART. 21. *Preinterpretative function.* By a Judge Depute permanent may this function also be exercised. But, in this case also, the proposed interpretation must, at or before the time of its being transmitted to the Judge Appellate, be transmitted to the Judge Immediate Principal, to receive his observations, as above.

Instructional. Ratiocinative.

ART. 22. If, by reason of the multitude of the persons, to whom, by this means, the exercise of the *contested interpretation reporting, eventually-emendative, sistitive, and preinterpretative* functions, is thus imparted,—the demand made upon the attention of the Legislature, or upon that of the Judges Appellate, or upon that of the Justice Minister, shall, at any time, be found to be inconveniently increased,—the Legislature will make the appropriate arrangements for lessening it.

Instructional. Expositive.

ART. 23. Of the ways in which such demand may be lessened, examples are the following:—

1. Confining to the Judge *Principal* the exercise of these functions respectively.

2. Requiring, on each occasion, the concurrence of Judge Deputes permanent, more than one.

3. In the case of the preinterpretative function, interdicting applications, on the same subject, by the same person, to Judicatories more than one.

Enactive.

ART. 24. For cause assigned, and subject to Appeal to the Judge Appellate, to a Judge Principal belongs the power of dislocating at any time any Judge Depute permanent, serving in his Judicatory: in which case the name of the Depute, is by the Registrar eliminated out of the list, formed from the Individual Service Calendar, as per Ch. xii. Section 28, *Locable who.*

Enactive.

ART. 25. Of such elimination, the effect is —to exclude the person so eliminated from the capacity of being located in the situation of Judge Principal: and from that of officiating in any other Judgeshire in the situation of Judge Depute.

Enactive.

ART. 26. In case of Appeal to the Judge Appellate, and thereafter to the Justice Minister, belong to them respectively the options following:—

1. To confirm the dislocation altogether.

2. To annul it altogether.

3. To confirm it as to the particular Judgeshire in question: annulling it, as to the incapacity of serving in this or that other Judgeshire, or in this or that number of Judgeshires: and so, as to the incapacity of being located in the situation of Judge Principal.

Enactive.

ART. 27. On the occasion, and for the purpose, of such dislocation, the Judge Principal proceeds in the same manner as in the case of any subordinate functionary.

Enactive.

ART. 28. If the dislocation be for ulterior punishment, or for compensation to a party wronged, or both,—the Judge Principal will proceed and decree accordingly, on the same evidence.

Instructional.

ART. 29. For the care to be taken by a Judge Principal as to the enabling his Depute to acquire aptitude for location as Principal, see Ch. xii. Section 27, *Judges', &c., Remuneration.*

attendance *exacted*, the greater would naturally be the number of those in whose estimate the distinction and power would outweigh the burthen of the labour: the *greater* the quantity exacted, the smaller the number of those in whose estimate the prospect of the still superior power, coupled with the remuneration in expectancy, would be necessary to the production of that same effect. If, by an advantageous change in his pecuniary circumstances, a functionary, to whose acceptance of the office the prospect of the pecuniary remuneration had originally been necessary, should have been led to set a lower value upon this expectancy than before, or at the same time a higher value on the labour than before, although a moderate degree of exercise might not be unpleasant to him, the result might be—his suffering himself to slide down into the *honorary* class. On the other hand, if, either by a disadvantageous change in respect of pecuniary circumstances, or by an increased relish for the occupation, a person whose place had originally been in the honorary class, should feel disposed to give increase to the quantity of this exercise, he might thus, if, on the part of the Judge Principal, he found no repugnance, pass without *eclât*, and without attracting any decided observation, out of the honorary into the expectant *stipendiary* class. In this way might public benefit be in perfect unison with private convenience: a union on which not only the utility but the stability of every institution so materially depends.

Section VI.

Locable who.

Enactive.

Art. 1. Except as here excepted, each Judge Principal, upon his responsibility, as per Ch. xii. Section 10, in addition to such as, on his entrance into office, in the judicatory in question, he finds already in existence, locates in the situation of Depute permanent, such others as he sees need to locate.

Enactive. Ratiocinative.

Art. 2. So soon as an all-comprehensive Code (non-penal and penal branches included, together with the system of procedure thereto belonging) shall have been established, the sole exception to locability in the situation of Judge Depute, is that which regards the profession of an Advocate. Of every person belonging to that profession, the name, ere he is permitted to practice, is set down upon the list of those who are admitted into that profession. No person whose name is, or has been upon that list, is it lawful for a Judge Principal, on pain of dislocation, to locate in the situation of Judge Depute permanent, unless his name has for [one] entire solar year, reckoning from the commencement of the then last solar year, been eliminated from that same list.

Section VII.

Dislocable how.

Enactive.

Art. 1. If in any one solar year, the service time of a Judge Depute permanent (as per Ch. xii. Section 28, *Locable who*) falls short of [one fourth] part of the maximum of a Judge Principal's service time, during that same period, as per Ch. xii. Section 25, *Attendance*, his name is, at the first day of the ensuing solar year, eliminated from the list of Judge Deputes permanent: the conclusion being formed, either that the requisite closeness and punctuality of attendance is greater than he can endure, or that, in the eyes of the Judge Principal, he is deficient in appropriate aptitude, absolute or comparative.

Thus in an Immediate Judicatory, so also in an Appellate.

Enactive.

Art. 2. In other ways, a Judge Depute permanent is dislocable by the several causes of dislocation by which a Judge Principal is dislocable, as per Ch. xii. Section 30.

Thus in an Immediate Judicatory, so also in an Appellate.

Section VIII.

Partiality Obviated.

Instructional.

Art. 1. If to the action of any cause of partiality, as per Ch. xii. Section 16, the situation of a Judge Depute permanent, to whom a suit is about to be consigned, is recognised by him as standing exposed, he will do well spontaneously to declare it, and on that account decline cognizance of it.

Enactive.

Art. 2. For the purpose of ascertaining the existence or non-existence of such exposure, if questions, as per Ch. xii. Section 16, be put to a Judge Depute, the Judge Principal, or some other Depute, will take his place in consequence, during the examination, and unless the cognizance of the suit be remitted to him, hear and terminate it in his stead.

For other matters, see Chapter xii.

CHAPTER XV.

Judge Immediate Deputes Occasional.

Section I.

Fields of Service.

Enactive.

Art. 1. The fields of service, or jurisdiction

of an Immediate Judge Depute occasional, are, on the occasion of each suit, marked out and determined by the act by which he is located: and thence by the suit or suits for the hearing and determination of which he is located.

Instructional.

ART. 2. Of Judge Deputes permanent, the institution has but one final cause—namely, the prevention of delay, by whichsoever of its two causes produced: delay in respect of the progress made in such suits to which commencement has been already given: and delay in respect of the commencement of such suits to which commencement has not been given.

Of Judge Deputes occasional, the institution has two final causes: namely, the minimization of delay as above; and the giving the judicial cognizance of the suit in question to a person, other than the persons occupying in the Judgeshire in question, the several situations of Judge Principal, and Judge Depute permanent. A desire to this effect may have had for its cause, either of two opinions: 1, an opinion of the inaptitude of those official Judges in the aggregate, or of that one, by whom it is foreknown or conjectured that the suit would be taken in hand: or 2, an opinion of extraordinary and comparatively superior relative aptitude, as having place, in the instance of this or that individual at large, of whom, for the purpose in question, proposition is accordingly made.

SECTION II.

Term of Service.

Enactive. Instructional.

ART. 1. Of an Immediate Judge Depute occasional, the term of service is, on each occasion, marked out by the act by which he is *located*. He may be located, either for the suit, or for the day: if for the day, it will be for the hearing and determining such suits as shall come before him in the course of that same day: or any such suit as, after having been commenced on a former day shall, contrary to expectation, at the close of it, remain undetermined.

Instructional.

ART. 2. Exceptions excepted, a Judge Principal will avoid *giving*, unless in case of necessity, to a proposed Depute, cognizance of a suit which does not present a promise of its termination in the course of that same day.

Enactive. Instructional.

ART. 3. An exception is, where it is on application, or by free consent, of the parties on both sides, that a Depute occasional receives his deputation. For in that case, whatsoever be the number of days that the suit requires, following or not immediately following one another, sittings may be continued by him, till the suit has received its termination.

Instructional.

ART. 4. Exceptions excepted, as per Art. 3, only in case of an extraordinary influx of suits, so great that the time of the Deputes permanent, if more than one, will not suffice to prevent accumulation, with the consequent delay,—will the Judge Principal, in addition to such Deputes permanent, locate any *occasional* Depute. Thus is provision made against superfluous and sinecurist Judge Deputes permanent.

Instructional. Expositive. Exemplificational.

ART. 5. Of the subject matter of the *sorts* of suits, the *individuals* of which are most likely to be apt for being committed to the cognizance of a Depute occasional, in the expectation that on one and the same day, suits in considerable numbers may be made to receive their termination, examples are the following:—

1. Simple corporal *vexation*, in any of its ordinary shapes.
2. Simple *vituperation*, as distinguished from specific *defamation*.
3. *Small Debts*, on any of the ordinary accounts.

For definition of Nos. 1 and 2, see Penal Code.

SECTION III.

Locable, who.

Instructional.

ART. 1. In the choice of a Judge Depute occasional, for the purpose of this or that individual suit, the Judge Principal, it is expected, will locate by preference, a person proposed or freely approved by the parties on both sides, if any such person, not manifestly unapt, can be found willing thus to serve.

Ratiocinative.

ART. 2. If not approved by *all* parties, the approbation of one or more will be a reason rather for rejection than for choice: since, by such partial approbation, on the part of those who choose, ground will be afforded for suspicion of a correspondent partiality on the part of the object of their choice.

SECTION IV.

Powers.

Enactive. Instructional.

ART. 1. Coercive powers, whether for means of execution, or for means of probation, the Judge will, in the *deputation instrument*, either communicate or not, to a Depute occasional, as to such Judge shall seem most meet. Powers for means of *probation* may be communicated

Enactive. Ratiocinative.

ART. 7. But, to obviate deperition, through negligence or sinister design, the record will, from first to last, be subjected to the inspection, and for every purpose, to the power, of the ordinary Registrar.

Enactive.

ART. 8. The proceedings will, in ordinary, be private. But, at the will of any two of the three referees, they will at any time be carried on in public.

Instructional. Ratiocinative.

ART. 9. To obviate the keeping the public Registration establishment encumbered with useless matter, the Legislature will make the requisite arrangements for the elimination of these records, as well as others, so soon as all demand for them, for the eventual proof of falsehood, or of *wrong* in any other shape, or *right* in any shape, shall have been at an end: saving any such memorandums as may be of use towards an all-comprehensive statistic history of the Judicial Establishment.

Enactive. Ratiocinative.

ART. 10. Coercive powers for means of *execution*, (as to which see Section 4, Powers, Art. 3,) the Judge *may* confer on the Referee Judicatory; for means of *probation*, *not:* for, if yes, parties might, by a *collusive* suit, instituted for the purpose, or on the occasion, of a really contested suit, elicit from persons at large, under the name of *evidence*, information productive of wrong, in all manner of shapes, to the proposed Evidence-holders or others.

Instructional. Ratiocinative.

ART. 11. *Arbitration* is thus a species of arrangement which cannot under any Code, without very pernicious deficiency, be left unprovided for.

In a Code framed upon the principle of this present one, true it is—that the frequency of the demand for the application of it to practice, will not, naturally speaking, be near so great as under any as yet existing established system of law. Still the demand for it cannot altogether be superseded, particularly in cases of complicated accounts between commercial men, or of distribution of large masses of property among claimants, by different titles.

Instructional. Ratiocinative.

ART. 12. Under arbitration, unless the requisite support be given to it by law, two deficiencies unavoidably have place: want of power to secure the attendance of witnesses; and want of power to give execution and effect to the award. Of these two defects, the first will not be productive of any evil consequences in those cases where there are no *extraneous* witnesses, or none but what can be made forthcoming, without the aid of the compulsory power of the Judge. But the other may have place in any case.

Against this latter defect, the English law provides a remedy, such as it is, by adding (to use the phraseology of the present Code) the imperative decree of the Judge, to the opinative decree pronounced by the arbitrator. But this mode of escaping from the clutches of the law-learned brotherhood, could not but be in no small degree unacceptable to them. It was the work of Statute law, and not till the reign of William the Third was it forced upon them. They have accordingly embraced every occasion for clogging it with technicalities, diminishing the efficiency of it by factitious expense and delay, and thus bringing it into disrepute.

SECTION VI.

Remuneration.

Enactive.

ART. 1. If proposed, or freely agreed to, by the parties on both sides, a Depute occasional, located by consent of parties, does not stand inhibited from the acceptance of remuneration, to any such amount and in any such lawful shape, as shall have been agreed on.

Enactive.

ART. 2. So, neither a Referee.

Instructional. Ratiocinative.

ART. 3. On this occasion, it will belong to the Judge Principal, to be upon the watch, and to take whatsoever measures may be necessary, to prevent all prolongation of time, for augmentation of reward.*

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* Let England here again be a warning to the world. In the Judicatories calling themselves *Courts of Equity*, the factitious length to which the examinations are drawn out by this sinister profit, is not the least efficient of the causes of that delay by which those judicatories stand distinguished above all others. In the Court of Chancery in particular, abuse in this shape is matter of such notoriety, as would long ago have driven out of their situations, overwhelmed with just reproach, all concerned in the practice, if power, impunity, and rapacity, did not so effectually steel men against shame. A sort of under judges, called *Masters*, pay themselves thus by the hour, whether they sit or do not sit, themselves or their clerks, the whole or some small part of the time. Of *three* appointments made and paid for, for three distinct days, it would not only be a loss to the practisers on both sides, but an injury to the master, and the master's master, if the *two* first were kept. If, in such a state of things, complaint of abuse could ever be made by any one of the thousands who are ruined by it, the only man to whom it could be made, is the man who derives the greatest profit by it,—the Chancellor; who gives to any man he pleases this faculty of irresistible and unpunishable pillage: the man by whom all these masters, twelve in number, are appointed: all with enormous salaries, over and above what is thus pocketed.

Enactive. Ratiocinative.

Art. 4. Lest more reward be secretly received from the one side, than from the other, the amount of what is given on each side will, on this occasion, be judicially ascertained. Receipt of remuneration, in any shape or quantity, other than what has been judicially declared, will be *corruption*.

Section VII.

Partiality obviated.

Enactive.

Art. 1. In relation to any supposed interest, self-regarding or sympathetic, a Judge Depute occasional is subjectible to interrogation, and, in consequence, liable to be divested of the cognizance of the suit, in like manner as a Judge Depute permanent, as per Ch. xiv. Section 8.

Instructional. Ratiocinative.

Art. 2. But for the restriction thus imposed, with or even without confederacy with a Judge Depute occasional, appointed at their instance for the purpose, ill-disposed persons might, in this way, by a fictitious suit, obtain undue advantage, in any one of a variety of shapes, to the injury of third persons. Against any such mischievous enterprise, the Judge Principal will accordingly be on his guard.

For other matters, see Chapter xii.

CHAPTER XVI.

QUASI-JURY.

General Preliminary Observations.

Being, in its leading features, different from every mode of Judicature as yet in use, in which men without appropriate experience are admitted into any share of judicial power, it became matter of necessity to employ for the designation of it a new and appropriate name. Having then in common with the Jury system, this characteristic feature, the word Jury is accordingly employed in the composition of it. But the powers allotted to the body thus designated, being different in several, and these very material, respects, from those allotted to any body of functionaries as yet designated by the name of a Jury, the Latin adverb *Quasi*, is employed for the purpose of giving advertisement of the difference.

In the framing of this part of the Code, as of every other, submission to the ends of Justice (as herein all along designated) has been the only guide; usage being no otherwise referred to, or employed, than as a source of evidence; evidence to wit, of the *beneficial* effects of such parts of the practice, in relation to the subject matter in question, as have been found beneficial in their character and tendency; and of the *pernicious* effects of such parts as have exhibited marks of an opposite nature and tendency.

For this purpose, with the ends of Justice for constant guide, the institution of a Jury in all its several forms, has been the subject of constant scrutiny. Taking these ends in the manner that re-agents are employed in chemistry, the endeavour has been all along to effect, between good and bad, a clear separation: to put aside the bad, to preserve the good for use; adding to it, such new and ulterior elements as the contemplation of those same ends, has, on the several occasions, been able to suggest.

Compared with the power of a Jury in the English style, the power of a *Quasi*-Jury, will, in respect of *effective force*, be found much narrowed. On the other hand, in respect of extent over the field of law and legislation, much enlarged; rendered in a word, co-extensive throughout with that of the judicial power itself.

Antecedently to entering into particulars, the reason why the power of this body of functionaries is, comparatively speaking, rendered thus narrowed is, that the demand for it, which under the English Government is so urgent, has in the Constitution delineated in the present Code no place. In the English form of Government, the medium in which Judges, as well as almost all other functionaries, live and move and have their being, is an atmosphere of corruption: the Judges are, in effect, dependent creatures of the Monarch, whose interest is so completely hostile to that of the people; and at the same time, in regard to responsibility, as well in respect of dislocability as punibility, virtually, essentially, and according to all experience, irresponsible.

The rule of action having for its makers, in all its parts, a set of men, whose interest is, in every branch of it, in a state of correspondent hostility to the people, one great, and perhaps the principal use, and good effect of the institution, consists in what it does towards rendering of no effect, every part to which it applies itself, in the body of the Laws. In a word, to undo what legislators and lawyers have done, is the great use of Juries.

In so far as what is done, by those highest constituted authorities, is right—conducive to the greatest happiness of the greatest number, —the institution of a Jury cannot but be prejudicial,—detractive from the sum of that same greatest happiness.

I. The apt features observed in the Jury system, and, on that account, retained under the Quasi-Jury system, may be thus enumerated:

1. The general end in view, namely, the applying limits and checks to the power of the Judge.

2. The degree of publicity which is in fact attached to the Jury system, and which with or without design has spread to other suits, in which no such body of unprofessional Judges is called in.

3. The sort of obligation, which, in virtue of the obligatory powers given to the Jury over the result of the cause, the Judge finds himself subjected to—namely, the obligation of giving to the Jury, and thence to the public at large, explanation and reasons, having for their object and tendency, the rendering the nature of the case clearer to the public as well as them, than it would be otherwise: the affording such grounds as can be found for such decision as, avowedly or unavowedly, it is his desire they should adopt, and thus rendering it more difficult, than without such explanation and reasons, for a Judge to pronounce, or cause to be pronounced, a decision palpably unjust and indefensible.

4. The effect which it has had in relation to evidence; causing it to be exhibited in a better shape, than any in which it is generally exhibited in a Judicatory into which no such body of ephemeral Judges is introduced.

II. The unapt features observed in the Jury system, and from the Quasi-Jury system on that account discarded, may be thus enumerated.

I. Evils correspondent and opposite to the direct ends of justice.

1. The corruptness of the situation of the persons locating in this case. The functionaries by whom these alleged and supposed intended limitators of the powers of the Judges are located, are the Sheriffs of Counties, or other functionaries alike exposed to Monarchical influence; to the naturally irresistible influence of that same all-ruling functionary, by whose influence over the Judge, the chief reason is afforded for the endeavour to apply this, or any other check to his power.

In virtue of this origin, a Jury comes into existence, with a principle of corruption involved in its essence.

2. The solemn promise forced upon the members of this body, coupled with a compulsory declaration of unanimity, which declaration is, in frequent instances, unavoidably and necessarily false.

3. The pernicious use made on this occasion of the religious sanction, the force of which has, in practice, been sought to be added on this occasion to the other sanctions.

4. The arbitrary power, given over the result of the cause, to a set of men, who by their situation, are demonstrated to be in comparison of the Judge, (the authority with which theirs antagonizes,) in respect of appropriate knowledge, judgment and active aptitude, palpably inferior; while by means of the habit of perjury forced upon them as above, sensibility to the force of the bridle, supposed to be applied by the several sanctions in question, cannot but be diminished.

5. The circumstances by which the tutelary power of the Public-Opinion Tribunal is in great measure prevented from bearing upon their minds. These are—1. The secrecy in which the deportment and discourse of every one of them, (while in the state of confinement in which they are kept, upon their retiring for the purpose of discussion,) is involved: a circumstance by which in respect of everything which belongs to that same deportment and discourse, their responsibility to that tribunal is nearly done away. 2. The magnitude of their number by which, in respect of the aptitude of the conjunct decision, the sense of responsibility is so much weakened on the part of each.

6. The scantiness of the application, made of this supposed instrument of control, with reference to the power of the Judge; the non-application of it to more than one out of many spots, in the field of Judicature; and the non-application of it, to any more than one out of all the stages through which any suit is liable to be carried.

If to the pernicious effects of this incongruity, there be any circumstance of alleviation, it must be to be looked for in those circumstances by which, as above, its utility—its contributoriness to the ends of justice, is so much reduced. But where, in those suits and stages, this institution (how unapt soever) has no place, the opposition of the system of procedure to the ends of justice, is still stronger and more mischievous.

II. Evils correspondent and opposite to the collateral ends of justice: maximization of expense of justice, in the shape of delay, vexation, and pecuniary expense.

1. Needless quantity of vexation, or expense, or both, produced by the multitude of the actually *serving* Jurymen, in each suit.

2. Much greater vexation and expense, produced by the still greater multitude of the obligatorily *attending* Jurymen, out of whom, in each suit, the actually serving are drawn.

3. The vexation, and expense, and mischievous complication, produced by the operation called *challenging*; an operation, the object of which is, to keep excluded out of the actually serving list of Jurymen, such number as are, on one side or other, suspected of partiality in favour of the respective adversaries.

4. Vexation attendant on the state of confinement and suffering, to which, in case of disagreement, the whole twelve are kept involved: to confinement which has for its avowed object the compelling them, in an unknown number, to make a false declaration, and violate that solemn engagement on which their efficiency is supposed to depend.

III. Feature, beneficial under the Government under which the Jury institution originated; prejudicial under the Government here proposed; therefore hence discarded.

This feature is the weakness which, by means of some of the above-mentioned features, this portion of the adjective branch of law, keeps infused in certain portions of the corresponding substantive branch: namely, those which have for their object the maximization

of the power of the few, at the expense of the security of the many.

IV. Features, supposed apt, which not being found in the Jury system, are here in the Quasi-Jury system, introduced.

1. Division of every Quasi-Jury into two sections: 1. the more erudite; 2. the more popular: the more popular, the more numerous: thence, in case of disagreement, the will of those who belong to the more numerous section, may preponderate over the will of those who belong to the less numerous section; those who belong to the more erudite section are introduced, in order that, by the influence of understanding over understanding, those who may be presumed to excel in intellectual aptitude, may guide those in whose instance, appropriate moral aptitude is more probable, in so far as they think it proper to be so guided.

2. Allotting to the Quasi-Jury by law, in express terms, and thence with surer, more comprehensive, and more constant effect, than has place in the case of a Jury, the several functions herein designated, by the several adjuncts, auditive, interrogative, and opinative or censorial.

3. Stating, in express terms, the nature of the explanations expected at the hands of the Judge, for the use of the Quasi-Jury, as also for the use of the members of the Public-Opinion Tribunal.

4. Ordaining the registration of the discourses of the Quasi-Jurymen, as well as those of the Judge, namely, for the purpose of subjecting to responsibility those assessors of the Judge, in case of unapt discourse on their part; and also the Judge himself, in case of disregard shown to their discourse, when its title to regard shall appear unimpeachable.

5. Into the Register, admission secured to any alterations proposed by the Quasi-Jury or any member of it, in the terms of the decision delivered by the Judge; yet so as the Judge shall remain at liberty to pay what regard to it he thinks proper; remaining thus with his responsibility undiminished, the proposed amendment going up of course to the Judge Appellate, for his adoption, rejection, or modification.

6. Power to the Quasi-Jury, at the instance of a party, to send up to the Judge Appellate the decision of the Judge, for confirmation or alteration, in a class of penal cases in which appeal is not allowed, where a Quasi-Jury is called in; cases in which, from the assured multitude of groundless appeals, it would otherwise be productive of preponderant evil, by useless vexation to parties injured and Quasi-Jurors.

7. Power to the Quasi-Jury, to allow to the pursuer, the faculty of appealing as well from a judgment of acquittal as from a judgment of conviction.

8. Power to the Quasi-Jury, to allow to a pursuer, in case of conviction, the faculty of appealing against the sentence, on the ground of deficiency, as well as to a defendant on the ground of excess, in the quantum of the punishment.

9. Power to the Quasi-Jury to call in the assistance of the Government Advocate, or the Eleemosynary Advocate, at their option, to assist in the wording of the amendment proposed by them, to the judgment, or the sentence of the Judge, as per No. 5.

10. Pay.—Provision made of regular pay, for indemnity to those, whose pecuniary circumstances would otherwise render the service of the public in this department, an intolerable hardship. The quantum is such as will render the compensation adequate to the majority of the whole number of the members of the community. To render it adequate in the case of the few, would render the correspondent burthen, intolerable to the many.

As to the erudite section, such pay as could be afforded, would be no adequate compensation; the distinction attached to their situation, will be of more value in their eyes, than any pecuniary compensation.

Section I.

Fields of Service.

Expositive.

Art. 1. By a *Quasi-Jury*, understand an ever-changing body of Assessors, convened from the body of the people, for the purpose of serving by the exercise given to their functions in the character of checks applied to the power, which but for these and other checks as per Ch. xii. Judiciary collectively, would be arbitrary, in the hands of permanent Judges.

Enactive.

Art. 2. Attached to every Judicatory, whether Immediate or Appellate, is a *Quasi-Jury;* co-extensive with that of the Judge is its local field of service.

Enactive.

Art. 3. So, with the exceptions in this section expressed, is its logical field of service.

Enactive. Expositive.

Art. 4. The occasions for its service, are of two sorts—*principal*, and *incidental*. The principal occasions are those on which the *Recapitulatory Inquiry*, or say *Recapitulatory Examination*, otherwise called the *Quasi-Trial*, is performed: for the incidental, see Art. 15.

Enactive. Expositive.

Art. 5. The Recapitulatory Examination supposes the anterior existence of a different one—call this anterior, the *Original Inquiry*, or say *Original Examination:* if all persons concerned are satisfied with the result of it, no recapitulatory examination has place, it is the only one. It is conducted by the Judge, his alone being the *imperative function*: the Quasi-

Jurors sharing with him in the exercise of the other *elementary* judicial functions, as to which, see Ch. xii. JUDICIARY COLLECTIVELY, Section 9.

Enactive. Expositive.

ART. 6. The Recapitulatory Examination is performed by the re-exhibition, re-consideration, and if from sources more than one, confrontation and comparison, of all evidence delivered on the Original Examination: with or without evidence, which on the original inquiry, *was* not, whether it could, or could not be, adduced.

Enactive.

ART. 7. The Judge has power to perform a Recapitulatory Examination of his own motion, for the satisfaction of the public, or of his own conscience: he is bound to do so, on petition presented by a party on either side: security for eventual compensation for the delay, vexation, and expense, being found by the applicant as per Procedure Code, Ch. xxvii.

Enactive.

ART. 8. When it is of his own motion, he pronounces not any definitive decree, till after the Quasi-trial has been performed: when on petition, decrees such as but for such petition will be definitive—say *eventually definitive decrees*, are pronounced by him, and to these decrees the petition has reference.

Enactive.

ART. 9. When on petition, it is in this wise; —the Judge's *eventually definitive decrees* having been pronounced, he addresses himself to the parties thus: "Is it the desire of any one of you that there should be a recapitulatory examination?" If by any one, answer be given in the affirmative, a day and hour for the purpose is appointed by him, after hearing that which they respectively have to say as to the time.

Enactive.

ART. 10. In case of necessity, the Recapitulatory Examination is carried on through any number of sittings. But, unless for obviating some casual and pressing inconvenience, no adjournment from one sitting to another has place, until the regularly employable quantity of time has been exhausted, without the suit's being ripe for the definitive decrees: saving at all times to the Judge, the power of continuing the sitting indefinitely, to prevent the breaking the thread of the inquiry to the detriment of justice.

Enactive. Instructional.

ART. 11. Should it ever so happen, that by the number of sittings expended, before the suit is ripe for decision, the regular length of service, appointed for a set of Quasi-Jurors, as per Section 6, has been exhausted,—they must be detained for whatsoever further number of days is necessary, unless, by consent of parties, matters can be so ordered, as that a decision, on this or that *point*, shall have been made with the aid of that one Quasi-Jury, the decision on what remains of the matter of the suit, being reserved for another Quasi-Jury.

Note that facts in such sort independent one of another, may for proof or disproof, without preponderant prejudice to right decision, be allotted each to a different Jury: and accordingly such distribution may in any suit be made.

Enactive.

ART. 12. Exceptions excepted, at the Recapitulatory Examination, no evidence is exhibited that was not exhibited at the Original Examination: if, of any part so exhibited, deperition, actual or virtual, has had place, supply to the deficiency is made from the minutes: and with consent of parties, the re-exhibition of any article of evidence may be omitted.

Enactive.

ART. 13. Exceptions are,

1. Where, since the issuing of the eventually definitive decree, appointing the Quasi-trial, evidence has been discovered, the existence of which was not at that time known. In this case, however, to warrant the admission of it, timely information in relation to it must have been afforded: in default of which it may be either rejected, or referred for re-examination, by the same, or another Jury, at another time.

2. Where, in consideration of the length of time that must elapse before the pieces of evidence in question can be obtained, the elicitation of it is thus deferred.

Enactive.

ART. 14. The subject matter appointed for Quasi-trial may be—matter of fact alone, or matter of law alone, or both together.

Enactive. Expositive.

ART. 15. The *incidental* occasions, on which a hearing before a Quasi-Jury may have place, are those on which, antecedently or even subsequently to appeal as for definitive misdecision, appeal as for *quasi-misdecision*, (as per Ch. xxii. APPELLATE JUDICATORIES, Section 3, *Subject matters of Appeal*,) has been made.

Expositive.

ART. 16. *Quasi-misdecision* has place, in so far as, by the conduct of the Judge, in any other way than by a definitive decree—for example by undue delay or by precipitation—the effect of misdecision has been produced.

Instructional.

ART. 17. On both occasions, petition for Quasi-trial, is in effect appeal from the Judge, acting *without* a Quasi-Jury, to the same Judge, or to another Judge, acting in that same judicatory, *with* a Quasi-Jury. For the difference

were placed absolutely within the power of the *defendant*. In these cases, the Legislature may perhaps, it is supposed, think fit to give to the Quasi-Jury the option of granting or refusing their fiat to the consequent stay of execution, where, by the defendant, declaration of appeal shall have been made. To this, their *Appeal-licensing* function, exercise will in such case have been given, by the grant or refusal of such their *fiat*. Name of this fiat, an *Appeal license*.

On the signature of an Appeal license, by the Quasi-Jurors, or a majority of them, the Judge will send up the Appeal in course, and stay execution accordingly: on the refusal of it, he will cause execution to be made, as if no such license had been prayed.

For the enumeration of those cases, see the Penal Code under the heads of the several offences: and the Procedure Code, Ch. xxviii. Appeal and Quasi-Appeal.

Expositive.

Art. 11. Cases of *indigent rapacity*, or say of *rapacious* or *predatory indigence*. By this appellative may be designated the class of cases which, on this occasion, is principally in view: in these cases, the nature of the offence being such, that without the stimulus of relative indigence, seldom is a person led into the commission of it.

Expositive.

Art. 12. Of offences of this description, the following may serve for examples: for adequate denominations and definitions, see the Penal Code.

1. *Fradulent obtainment:* that is to say, obtainment with consent procured by deception, without supposition of title on the part of the delinquent, or intention of making restitution, or of being amenable to law.

2. *Theft:* that is to say, caption without consent, or supposition, or pretence of title, or intention of restitution, or of being amenable to law.

3. *Robbery at large:* that is to say, caption by force, or obtainment by consent, extorted by means of immediate, or unpreventible injury, to body, mind, property, or reputation.

4. *Highway Robbery:* that is to say, on a much frequented road, street, or other public and open place.

5. *Day Robbery:* in conjunction with *Housebreaking*.

6. *Night Robbery:* without *Housebreaking*.

7. *Night Robbery:* with *Housebreaking*.

8. *Day or Night Robbery:* with or without Housebreaking, but in conjunction with *Homicide:* that is to say, with Homicide intentional, as to that effect, as well as the act; and whether, in relation to the robbery, *preparatory, concomitant*, or *consequential:* preparatory, for preventing resistance: concomitant, for subduing resistance: consequential, for punishing resistance, or for security against justice.

9. *Housebreaking:* with intent to rob.

Instructional. Ratiocinative.

Art. 13. Circumstances, by the consideration of which, it may happen, that in the mind of the Legislator, a demand for the institution of the restriction, thus put upon the faculty of Appeal, may have place, are as follows:—

1. On the one hand, the magnitude of the mischief of the offence.

2. The comparative multitude of offences, and offenders, relation had to the species of offence.

3. The comparative improbability, even of prosecution, much more of conviction, in the case of a person completely innocent, as to the sort of offence charged.

4. The otherwise certain multitude of groundless Appeals, for the chance of ultimate impunity, and the certainty of intermediate respite.

5. The exclusion, if put by the Penal Code, as upon the principles of this Code, it would be, upon all punishment, productive of evil in any shape, of a nature absolutely irreparable, and uncompensable—for instance, death or loss of limb, or bodily organ,—certain extraordinary cases excepted.

6. On the other hand, the unavoidable severity of the punishment, notwithstanding the exclusion put upon punishment productive of irreparable evil as above.

As to the effect to be given to the exercise of this function, see the Penal Code, and the Procedure Code. So as to the form of the instrument, by which expression is given to it.

Instructional.

Art. 14. In cases, such as the above, it will be for the consideration of the Legislature, whether to authorize or no, the Judge at his discretion, to make after the initiative application, but one inquiry, and that before a Quasi-Jury; or to make two inquiries, namely, the original without a Jury, and the recapitulatory with a Jury, as in other cases. The more simple the case appears on the initiatory application, especially in respect of the quantity and quality of the evidence, the less will naturally be the demand for a second examination, in addition to the first.

Enactive.

Art. 15. Modes in which the above functions of the Quasi-Jury (the Appeal-licensing excepted) are called forth into exercise:—

1. By the parties and their assistants, or substitutes, professional or gratuitous—what is said, is in general addressed and understood to be addressed to the Quasi-Jury in conjunction with the Judge.

2. By the Judge when making his observations on the evidence, or on the argumentation, or on the conduct of a party, or an extraneous witness, or any other actor on the Judicial theatre; or in stating the reasons on which his decrees, mandates, or other discourses, or

acts are grounded,—the Quasi-Jury are in like manner addressed as principal auditors, appropriate regard being at the same time had to the *Judicial Inspectors*, as per Ch. xvii., and the several other actors on the Judicial theatre.

SECTION IV.

Located how.

Enactive. Expositive.

ART. 1. For seven days together, commencing with Monday, the day of rest included, in some Justice Chamber—*ordinary*, or, as in the case of *Out-door Sitting, extraordinary*—attend together three Quasi-Jurors, one of them a *Select*, the two others *Ordinaries*, forming thus an *Attendance Set*. Defaulters excepted, (as per Art. 2,) whatsoever be the number of Quasi-Trials in the week, these three serve together in all: thus forming the same *Actually-serving Set*.

Expositive.

ART. 2. If there be a defaulter, or defaulters, this *Actually-serving Set* are in so far different from the *Destined Attendance Set*.

Expositive.

ART. 3. A defaulter may be so of the whole seven days, or of any one of them.

Expositive.

ART. 4. To a defaulter is substituted, as per Art. 22., at short warning, a *Supplementalist*, out of the *Town liable List*.

Enactive.

ART. 5. In default of such Supplementalist, a *Judicial Inspector* will be drawn by lot from among the Probationary Lawyers, of whom see Ch. xxiii., or from among the Suitors, or witnesses in waiting to be heard on other suits.

Enactive.

ART. 6. On each week attend *Sets*, one or more, according to the exigency of the Service.

Enactive. Expositive.

ART. 7. *Liable List*, is, in each Judicial territory, Immediate or Appellate, the name of the List containing all those who therein are *liable* to be called upon to serve as *Quasi-Jurors*.

Enactive.

ART. 8. It is composed of the persons entitled to officiate as Electors, as per Election Code, Ch. vi. LEGISLATURE, Section 6, *Eligible who*,—those excepted, who for this purpose, have on appropriate grounds been eliminated.

Enactive. Expositive.

ART. 9. Of the *Destined Attendant Set*, or sets, of each week, the composition is the result of the connected operations of the *Quasi-Jury Minister* of the subdistrict, as to whom see Art. 12, and the Registrar of the Judicatory, whether Immediate or Appellate, in which they are to serve.

Enactive.

ART. 10. By the Minister, out of the above Service List, as per Art. 8, is formed the *Liable List* of each solar year: by the Registrar, out of that *Liable List*, are formed the *Destined Attendant Sets* of the several weeks.

Enactive.

ART. 11. For an Immediate Judicatory, the *Destined Attendant Sets* are drawn from the subdistrict in which that Judicatory sits; for an Appellate Judicatory, from the District in which that Judicatory sits.

Enactive. Expositive.

ART. 12. Subject to dislocation by the Justice Minister, the *Quasi-Jury Minister* is the *Vote-taking Clerk* of the Subdistrict, who, as such, has been located by the Election Minister, as per Election Code, Ch. vi. LEGISLATURE, Section 7, *Election-Offices*. Known to this Voting Clerk, are, as to their persons, all who have delivered, and as to their habitations, all who are entitled to deliver Election Votes. Such dislocation the Justice Minister cannot effect, but by locating, by the same instrument, a substitute of his own choice.

Enactive. Expositive.

ART. 13. Out of the above Electors, are framed by the Minister, two Lists—the *Excluded* List, and the *Exempted* List. Those on the *Excluded* List, cannot be put upon the *Liable* List: those on the *Exempted* List, cannot be put thereon, but on their own application.

Enactive. Expositive.

ART. 14. Of those, if any, by whom such application is made, is composed the *Voluntarily-serving Liable* List. Of the *Liable* List, those who are not upon the *Exempted* List, are distinguished by the appellation of the *Obligatorily-serving Liable* List.

Instructional.

ART. 15. Of *exclusion* what shall be the grounds, will in some measure be the result of local considerations. Of proposable grounds, examples are as follows:—

1. *Disreputableness* on the score of *criminality*. Evidence, the Delinquency Register: as to which see the penal code.

2. *Preoccupation* in public business: as in the case (exceptions excepted) of all Public Functionaries. Evidence, *The Official Register*.

Instructional. Expositive.

ART. 16. Of *Exemption*, proposable grounds are as follows:—

1. Habitual infirmity of body.
2. Habitual infirmity of mind.
3. Superannuation—to wit, on presumption of relative incapacity, through infirmity, or in respect of extraordinary vexation, by fatigue and discomfort of travelling and extra-habitation.
4. Preoccupation private; as in the case of Seafaring men, Medical men, Professional Lawyers: also any other persons, the nature of whose professional occupations does not admit of their being, for so long a time as that of a week together, suspended, or carried on by substitutes.
5. Foreignership; that is to say, inaptitude through want of sufficient acquaintance with the language in which the proceedings are carried on.
6. Absentation from home.
7. Relative unaffluence.

Enactive. Expositive.

Art. 17. Of the existence of an appropriate ground of exemption, as per List, evidence provisionally conclusive will, in the instance of each individual, be a written instrument, expressive of an application on his part, signed by him, (the case of infirmity of mind excepted,) and containing his assertion thereof, corroborated by the attestation of two [or more] householders of the same Subdistrict, declaratory of their persuasion of the truth of such his declaration: responsibility, in case of falsehood, the same as in case of testimony orally uttered on the occasion of a suit. Name of the Instrument, a *Quasi-Jury exemption demand.*

Enactive.

Art. 18. On the ground of infirmity, whether of body or mind, as also on that of private preoccupation, the *demand* will require to be received on the first day of each solar year: if it be not received on or before that day, the name of the individual will be entered in the *Liable List.*

Enactive. Expositive.

Art. 19. *Relative unaffluence.* Understand thereby, either,

1. Relative untidiness: that is to say, want of such habiliments, by the want whereof, annoyance would be caused to colleagues; or,
2. Relative untrustworthiness: that is to say, in such sort and degree that the necessary expenses of the journeys of the individual to the place of Judicial attendance, could not, without too much hazard be advanced, as per Section 5, *Subsistence-money.* Adequate evidence is, in both cases, either,

1. *Exemption demand*, as per Art. 17; or,
2. *Certificate*, by *Local Headman*, as per Ch. xxv., and *Local Registrar*, as per Ch. xxvi.

Expositive.

Art. 20. The *Exempted* List constitutes an appendage to the *Liable* List. Where the ground of exemption is *temporary*, the name of the same person may, of course, be in the same year, at one time on the *Exempted* List, at another time on the *Liable* List: and so, in the course of the year, any number of times.

Enactive.

Art. 21. In time of peace, apprehension of imminent war excepted, (as per Ch. x. Defensive force, Section 12, *Powers of Military, as to non-Military,*) situation in the Stipendiary Army or Navy is not a ground of exclusion; nor,—except on special application by a *Quasi-Jury exemption demand*, as per Art. 17,—of exemption.

Enactive. Expositive.

Art. 22. Out of the *Liable List*, will be formed by the Minister two distinct Lists, to wit, the *Country Liable List*, and the *Town Liable List.* To the *Town* List, belong all inhabitants whose habitations are within the precincts of the town in which the Justice Chamber of the Judicatory, whether Immediate or Appellate, is stationed. Of the Members of this List, the destination is, to serve, as per Arts. 2, 3, 4, at short warning as *Supplementalists*, or say *Substitutes*, to defaulters belonging to the *Country* List; or for the purpose of completing the week's service, as per Art. 38. To the *Country* List belong all the other *Liable* inhabitants of the Judicial territory of the Judicatory, whether it be *Immediate* or *Appellate.*

Enactive. Expositive.

Art. 23. Out of the Country Liable List, are formed the *Select Liable List*, and the *Ordinary Liable List.* So, out of the *Town Liable List.*

Enactive. Expositive.

Art. 24. To the Select Liable List belong among those whose names are in the *General Liable List*, all those (exceptions excepted) from whom (as per Art. 14) appropriate application to be admitted thereupon has been received. By such application, a man disqualifies himself from receiving subsistence-money, as per Section 5. On the other hand, he enjoys the distinction conferred by the functions attached to his situation, (as per Section 3, *Functions.*)

Enactive. Expositive.

Art. 25. To the Registrar of the Judicatory, whether Immediate or Appellate, it belongs out of the *Country Liable List*, as furnished to him by the Quasi-Jury Minister, (as per Arts. 9, 10, 22,) to frame, for the several *Quasi-Jury Examinations*, the several *Destined Attendance Sets*, for the several weeks, or the year: and time after time, in such number as the service shall have required, to *accerse*, or say *summon* them respectively: and each time, in case of default, to accerse *Town Liables* to take the place of *Defaulters.*

Enactive. Expositive.

ART. 26. As in the Immediate, so in the Appellate Judicatory, to the Registrar it belongs, from time to time, to *accerse* the several individuals, by whom the service of the several weeks in the solar year is to be performed. To this end, the state of the *Liable* List will be made constantly known to him in manner following:—

Towards the close of each solar year, time enough to be received by the several individuals before the first day of the ensuing year, —the Quasi-Jury Minister, having caused to be framed and printed, transmits to the habitation of each individual liable, a printed exemplar of the *Liable* List for that same year, as also on the earliest day, one or more exemplars to the *Registrar*. This List will be divided into as many *Sub-Lists* as there are *Bis-subdistricts*, or say *Local Headman's* and *Local Registrar's* territories in the *Subdistrict*, or say *Immediate Judge's territory:* on each such sub-list, the individuals will stand indicated in the alphabetical order of their surnames.

Enactive. Expositive. Ratiocinative.

ART. 27. In the course of that same ensuing year, he will, in proportion as the information reaches him, transmit to the Registrar notice of the several individuals, who, by death, expatriation, exclusion, exemption, or otherwise, cease to become liable. Of these, the Registrar will frame a List, which will constitute an appendage to the *Liable List* of that year. Name of it, *Efflux Liable List*. Use of it, preventing his transmitting *Accersition mandates* to those in whose instance their incapacity of serving has been thus made manifest.

Enactive. Expositive.

ART. 28. In like manner he will give notice of the several individuals who, by becoming entitled to give votes, become liable to serve as Quasi-Jurors. Of these will be composed another appendage. Name of it, the *Influx Liable List*. Amalgamated with the *Liable List* of the year, this appendage, after deduction of the names in the *Efflux List*, will constitute the Liable List of the next year.

Enactive. Expositive.

ART. 29. From each Liable List thus constituted, the individuals constituting the several sets will, as occasion calls, be determined by the Registrar in open Judicatory, by *lot*, as per Ch. ix. MINISTERS COLLECTIVELY, Section 16, *Locable who*, Supplement: the time of the several operations being so adjusted, that, between the day and hour of the delivery of the accersition mandate, at the habitation of the individual, and the day and hour appointed for the commencement of his attendance at the Justice Chamber, an interval sufficient for journey and preparation shall have place.

Enactive. Instructional.

ART. 30. The day and hour of the drawing being foreknown, any person who, seeing his name in the Liable List, has a legitimate excuse for not paying attendance on the coming week, transmits to the Registrar, at his office, an appropriate *Excuse paper*, for the truth of which (as per Section 6, *Attendance*) he is compensationally and punitionally responsible. For the several allowed *excuses*, see the *Non-compliance Excuse List* in the *Procedure Code*, Ch. x. Section 5. In it are contained the several excuses by which exemption is given from the obligation of compliance, with the several *accersition*, and other judicial and authoritative mandates, authorized by the Legislature.

Enactive.

ART. 31. Of the several individuals from whom, within the time in question, *Excuse papers* have been received, the names are transcribed into a List, which is kept hung up in the Justice Chamber in conspicuous characters and places. On the drawing of the Lottery, if the name of any such *Excuser* is drawn out, the Registrar points to that same name in the *Excuse List*, and another is drawn out instead. His name is again put into the Lottery at the end of [ ] weeks.

Enactive. Instructional.

ART. 32. To the *Quasi-Jury Minister*, the appropriate facts in question, as above, will have been made known as follows:—

I. Of the deaths, such as have happened in the several *Local Registrar's* territories, will have been made known to him by so many *Death-indicating certificates*, transmitted to him (as per Ch. xxvi. LOCAL REGISTRARS, Section 5, Death-recordation Function) by the respective Local Registrars: effluxes produced by other causes will have been made known to him, from such other sources of information as his situation has furnished him with.

Enactive. Instructional. Ratiocinative.

ART. 33. II. Of the individuals, whose names belong to the *Influx List*, the accession will, in the instance of those by whom votes have been delivered, or are intended to be delivered, have been made known to him, to wit, in his quality of Vote-taking Clerk of the Subdistrict, as per Art. 12, by the applications respectively made by them, for the blank instruments, by the filling up of which (as per ELECTION CODE, Section 7, *Voters' Titles, how pre-established*) their respective titles to vote will have been constituted: in the other instances, from such other sources of information, as his situation has furnished him with. Note, that of the several individuals, whose names are upon the *Liable List*, there is not any one,

who may not have an interest in maximizing the number of those who will be sharers with him in the burthen, which it is the unavoidable effect of the institution to impose.

Enactive. Ratiocinative.

Art. 34. For the better securing the completeness and correctness of the information thus furnished, attached to the printed *Liable List*, of each year will be the *Efflux List* and the *Influx List* of the last preceding year: and in each List will be added to the name, indication of the *source* from which, the *channel* through which, and the *day* on which, the information was by the Registrar received.

Enactive. Instructional.

Art. 35. Of the Sets to be drawn out for each ensuing week, the *number* will have been predetermined by the Judge, from the number of *Quasi-Jury Trials* destined to be performed in the course of the week. As to their probable respective duration, and thence as to their aggregate number, grounds of inference will in the instance of each have been produced by the *Original Inquiry*.

Enactive. Instructional.

Art. 36. Corresponding to the number of the Judge Deputes permanent, if more than one, will be the number of *Quasi-Jury Trials*, capable of being, upon occasion performed in so many Justice Chambers, principal and occasional, at the same time.

Enactive. Instructional.

Art. 37. If, before the end of the week, it has been clearly ascertained, that, of the *sets* in attendance there are one or more whose service will not be needed, every such superfluous set, will, as soon as it is so discovered, be dismissed.

Enactive. Instructional. Expositive.

Art. 38. If on the other hand, and so soon as, whether by experience or by well grounded anticipation, it has been determined by the Judge that the number in attendance is not sufficient for the completion of the service,—other sets, in sufficient number, will be forthwith *accersed* from the *Town Liable List*, as per Art. 22.

These numbers will, in the nature of the case, be indefinitely variable. Sitting time in a day, being (say) *eight* hours, on this or that day, may have been performed Quasi-Trials *eight* or more. On the other hand, in this or that instance, by one and the same Quasi-Trial, eight or more hours may have been occupied.

Enactive.

Art. 39. When, in any Judicial territory, Immediate or Appellate, a man has paid due attendance, he is not, in and for that same territory, liable to serve anew, until all other persons in the *Liable List*, of that same territory, have served. At the end of such his term of service, a mark, indicative of the fact of his having served, together with the day on which his service was completed, will by the Minister be entered upon the printed Liable List of that year, and continued on the Lists of the several succeeding years, until it has been duly eliminated.

Enactive.

Art. 40. Any person may serve by substitute: the substitute being a person whose name is on the *Liable List*. In this case, the substitute brings with him, the *Accersition mandate*, addressed to the principal. He stands bound to answer any questions as to his being the person whose name is on the List, and as to his not having been chosen for any sinister purpose: such for example, as the showing undue favour or disfavour towards any party to the suit. The principal is thereupon exempted from taking his chance in the Lottery (as per Art. 31) for ( ) weeks to come: and the substitute stands excluded from serving again, until, as per Art. 39, the stock of those who remain liable to serve has been exhausted.

Enactive. Expositive.

Art. 41. To keep watch against abuse in every shape in this department, will be among the special tasks of the *Public-Opinion Tribunal*. Of these shapes, a principal one would be the species of fraud called *Packing*. By *packing*, understand in this case an arrangement under which,—in consequence of an agreement, express or tacit, between the Quasi-Jury Minister on the one part, and men of wealth or influence on the other part,—by means of a system of absentation and corresponding substitution, individuals, one or more, attending for the purpose of serving the interests of a party, at the expense of justice, are, on this or that occasion, introduced into the composition of a Quasi-Jury. As to this danger see Section 1, *Fields of Service*, Art. 21.

Instructional. Ratiocinative.

Art. 42. In a newly constituted State, in which population is thin, territorial divisions in proportion extensive, appropriate journeys long, and on the part of the ordinary class, even with reference to this function, appropriate aptitude in its several branches rare,—the Legislature will probably find itself under the necessity of confining the selection, out of this same class to *Towns:* extending the range, from time to time, in proportion as those several obstacles give way, to the correspondent and opposite features of convenience.

Note.—On this occasion, it would be among the objects of consideration for the legislature, whether anything, and what, can be done for the alleviation of the tyranny hitherto, in a

greater or less degree, so universally exercised over the weaker by the stronger sex. Suppose for this purpose, amongst other things, a modification of the Quasi-Jury. The number of the males (the total number being minimized as it has been) would scarcely, it would be thought, admit of retrenchment. If so, the next least number affording a certainty of a majority is five. Reserving in every case the predominance to the stronger sex, here then would be the foreman as before, a male erudite, ordinaries two males: of the female sex, erudite one, ordinary the other. Logical field of exercise, those cases in which the interests of the two sexes antagonize. For particular instances, see the Table of Private Offences, in the *Penal Code*. Under the penal head of *Offences* against property, will be included several non-penal heads respecting *rights*. Instances are, 1. Reciprocal rights and obligations of male and female in the married state. 2. Shares as between sex and sex on occasional succession. 3. Encouragement for medical practitioners of the female sex, for cases of parturition, pregnancy, and other complaints peculiar to that sex. 4. Equal but appropriate partition of the female sex, in whatsoever encouragements, are given at the public charge for the melioration of education.

On the occasion of the *Election Code*, secrecy of suffrage being secured, much reason was found for giving to the female sex an equality of suffrage, as compared with the male; no reason found on the other side: no argument but what was grounded on the assumption of the thing in dispute. From this source, as from every other, corruption must be guarded against. On this account, as well as on account of experience, females should not be admitted till after the child-bearing age. So, on account of comparative want of experience, an exclusion should be put upon never-married females, in favour of married women and widows. For more assured freedom, better perhaps that upon women under the power of husbands, an exclusion should be put in favour of widows.

In domestic society, as between man and wife, in case of contrariety of wills, in respect of the occurrences of the day, the determining power cannot be lodged in any other hands than those of the male. The hands in which power, on whatever occasion exercised, must be reposed, are those in which, physically speaking, it can at all times be exercised: but for some time before, and after parturition, the female (although by a comparatively rare accident, she were in respect of physical strength the stronger of the two) could not possibly be so, nor yet, when encumbered, and with increased sensitiveness, with an infant at her breast. But far from affording reason against the female sex being let into a participation of political power, exercisable on political occasions, this consideration affords a reason in favour of this advance towards equality, inadequate as it cannot but be.

SECTION V.

Subsistence-Money.

Enactive. Instructional.

ART. 1. The subsistence-money of an *ordinary* Quasi-Juror is [ ] per day of attendance: journeys and demurrage included: this being double the estimated amount of the ordinary day's pay of the lowest paid class of labourers.

Enactive.

ART. 2. So, in the case of each individual, together with appropriate medicines and medical treatment, for every day in which his return is prevented by sickness; the fact being established by appropriate evidence.

Enactive.

ART. 3. Under the care of the Registrar, the regular subsistence-money (as per Art 1.) is sent and delivered to the Quasi-Juror, or left at his house through the medium of the Local Headman of the Bis-subdistrict, at the same time with the *Accersitive mandate*. The casual additions (as per Art. 2.) are furnished by the Registrar at the Judicatory.

Enactive.

ART. 4. A Quasi-Juror of the *Select* Class serves gratis.

SECTION VI.

Attendance.

Enactive. Expositive.

ART. 1. *Attendance, how enforced.* By the Registrar is regularly framed and kept the *Quasi-Jury Defaulter's List.* In it are two *Sub-lists:*—1. The *Country Defaulter's List:* and 2. The *Town Defaulter's List.* To the name of each defaulter, as soon as he becomes so, the Registrar attaches an indication of the fact, and the day, and of the proceedings carried on, in consequence.

Enactive.

ART. 2. For the penalty for each day's default, as well on the part of the *Select*, as on the part of an *Ordinary* destined Quasi-Juror, see the Penal Code. In lieu of, or even in addition to, compensation money, for the overburthened Liables who have served, penalty for each day's default, so many days' imprisonment: name of the fund into which (in custody of the Registrar) the money is paid, the *Overburthened Quasi-Jurors compensation fund.* Out of it, to such *Town* Quasi-Jurors as have served, compensation is made for the burthen brought upon them by defaults, whether on the part of the Country, or of the Town stock of destined Quasi-Jurors.

who may not have [illegible]
the number of [illegible] constru-
him in the burthen, [illegible] Town
effect of the instru[illegible] Government
[illegible] the ground

Exam[illegible]

Art. 34. For [illegible]
pleteness and [illegible]
thus furnished, [illegible] instrument
List, of each [illegible] *false*-
the *Influx List* [illegible] an assertion
in each List [illegible] criminating
dication of the [illegible] them-
through which [illegible] compensational
formation [illegible] proof of the
[illegible] the

Art. 35. [illegible]
each [illegible]
predete[illegible]
of *Quasi*[illegible] *Spitude.*
in the [illegible]
bable [illegible]
their [illegible]
will [illegible] a Quasi-Juror,
dicen[illegible] be made
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[illegible] error in judgment,
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[illegible] or even con-
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[illegible]

[illegible] against unjust
[illegible] the Judge, he
[illegible] the benefit of
[illegible] namely,
[illegible] *Complaint Book*,

as per Ch. xii. Judiciary collectively, Section 18.

Enactive.

Art. 6. To the Judge, in the exercise of his *Sedative* function, as per Ch. xii. Judiciary collectively, Section 11, it belongs to take care that, in the exercise of their several functions, whether severally or collectively exercised, the members of the Quasi-Jury do not, designedly or inadvertently, produce useless and pernicious obstruction, delay, or vexation, in the process of Judicature.

Expositive.

Art. 7. Examples are as follows:—

1. In the exercise of the *auditive* function, insisting on the hearing of useless documents or arguments, or the useless repetition of useful ones.

2. In the exercise of the *inspective* function, as applied to discourse in a written or other visible shape, one of the members keeping the document to himself to the prejudice of the right of another; or one or all of them keeping the business unnecessarily at a stand, while the lective function is, or is supposed to be, exercising by him or them.

3. In the exercise of the *inspective* function at large, keeping the business at a stand by needlessly prolonged inspection: especially if, where a *person* is the subject of the inspection, needless vexation be inflicted on the person.

4. In the exercise of the *interrogative* function, persisting in the utterance of irrelevant questions, or in repetitions of the same question, or persisting in exacting an answer, when by the Judge the question has been decreed to be such, that answer thereto is not exigible.

5. In the exercise of the *commentative* function, obstructing the course of the business by irrelevant or frivolous observations, or repetitions of the same observation.

Instructional.

Art. 8. For occasional assistance in the formation of his judgment, a Quasi-Juror of the *ordinary* class, has before him the appropriate knowledge and judgment that may naturally be expected at the hands of his colleague, whose place is in the *select* class.

Enactive. Ratiocinative.

Art. 9. In a week, for the service of which, divers Quasi-Jury sets are in attendance, should it so happen, that during any part of the time, sets one or more are not in actual service, their appropriate place will be in the *Inspector's Gallery*, as to which see Ch. xvii. Judicial Inspectors. The greater the time employed by them in that seat of appropriate instruction, the less will be the time during which they will stand exposed to seduction at the hands of parties and their adherents.

CHAPTER XVII.

Judicial Inspectors.

Section I.

Who and Wherefore.

Expositive.

Art. 1. By *Judicial Inspectors* understand all persons whatsoever, who, not appearing, unless by accident, in any other character among the actors on the Judicial theatre, as per Ch. xii. Judiciary collectively, Section 2, are present, while judicial business in any shape is carrying on: of them is constituted the Committee of the Public-Opinion Tribunal, sitting in the Judicatory: say the *Judiciary Inspection Committee*. See Ch. xii. Judiciary collectively, Section 3, *Judiciary Functionaries*.

Instructional. Ratiocinative.

Art. 2. For their own instruction, as well as for a check to inaptitude in all shapes on the part of judicial functionaries of all classes, to maximize the number of these occasional and unpaid functionaries is among the objects of this Code.

Enactive. Ratiocinative.

Art. 3. In this view it is, that in the Justice Chamber it provides for them an appropriate situation, under the name of the *Inspectors* or *Inspection Gallery*, with the intent that, in that situation, for the commodious exercise of this their office, the necessary and effectual means may at all times have place.

Instructional.

Art. 4. At *Out-door sittings*, it will be the care of the Judge to make for their accommodation the best provision which the nature of the place, and the occasion, will admit.

Instructional.

Art. 5. So, even at Night sittings, in so far as may be without disturbance, and without prejudice to security.

Expositive. Instructional.

Art. 6. Of the description of persons, whose service in this situation for the advancement of justice is desired and expected, examples are as follows:—

1. Probationary Law Practitioners, serving in the Inspector's Gallery, for the purpose of entitling themselves to admission on the list of Professional Lawyers, as per Ch. xxiii. Section 4.

2. Parties litigant, in other suits, waiting their turn for audience.

3. Persons in attendance as witnesses, in expectation of being heard in any such other suits.

4. Persons in attendance as proposed witnesses or other evidence holders, waiting to be heard in the suit which is on the carpet: those excepted, who, for prevention of concert in falsehood, have been ordered to withdraw.

5. Persons brought by curiosity. Of these, the number will naturally be, as it is desirable it should be, proportioned to the importance, real or apparent, of the business in hand: its importance, whether with reference to the interest of the public, or of individuals specially interested.

6. Non-adults; attending, whether spontaneously, or by direction of parents or guardians, in this theatre and school of justice.

7. Persons brought by request of parties, or by interest taken in their fate.

Enactive. Instructional.

Art. 7. For every hearing by appointment, admission tickets for the Inspector's Gallery, the Registrar will, on application, deliver to litigants: the same number to litigants on one side, as to those on the other; to wit, for the purpose of their locating, in the most commodious places, their respective friends, but under the precautions necessary to prevent annoyance.

Enactive. Instructional. Ratiocinative.

Art. 8. What, on this occasion, is desirable is, that no litigant should be without some one friend at least, watching over his interest, and able upon occasion to make report; but, forasmuch as, in certain cases, it may happen, that on one side of the suit, or on each, the number of parties is so great, that, if each were to locate a friend, visiters of other classes might stand excluded, and in particular, those of the Probationary Professional Lawyer class, the Judge may, at his discretion, limit the number thus admitted, so as it be the same on each side: and, if the number of litigants claiming tickets be greater than the maximum number so appointed, the Registrar will determine by lot to which of them tickets shall be delivered.

Section II.

Functions.

Enactive.

Art. 1. To Judicial Inspectors belongs of right the *auditive* function, as in the case of Quasi-Jurors.

Enactive. Instructional.

Art. 2. So, though at the discretion of the Judge, the *inspective*, the *interrogative*, and the *commentative*; and, to the exercise of these functions by these same functionaries, in so far as may be without obstruction to the business, he will rather give encouragement than hinderance.

Enactive.

Art. 3. To them belongs not the *Opinative* function, nor the *Appeal warranting*; and in

these may be seen the principal differences between their functions and those of the Quasi-Jury.

CHAPTER XVIII.

Immediate Government Advocates.

Section I.

Fields of Service.

Enactive.

Art. 1. The same as that of the Judge is the Immediate Government Advocate's *local* field of service.

Enactive.

Art. 2. *Logical Field of Service.* In *all* judicial cases, in so far as Government is a party, he officiates as substitute to the Government.

Enactive.

Art. 3. Except it be in a case in which Government is on one side of the suit, and the Sublegislature on the other,—the Government Advocate, by acting on behalf of any Sublegislature, acts on behalf of Government.

Expositive.

Art. 4. Cases, in which Government is a party, are either,

1. Non-penal cases.
2. Penal cases purely public.
3. Penal cases, publico-private.

Expositive.

Art. 5. I. *Non-Penal cases in which Government is a party.* These are, those in which, in respect of the aggregate mass of property belonging to the Government, as Trustee for the public, or this or that portion of that same aggregate,—judicial contestation has place, between the Government on the one part, and some individual or subordinate body on the other part; no crime in any shape being imputed, on the occasion, to the individual, on the Defendant's side.

Expositive.

Art. 6. II. *Penal cases purely public.* These are, those in which no assignable individual having received special *wrong*, or say *injury* in any assignable shape, the sole party injured is the Government, as Trustee for the State.

Expositive.

Art. 7. Examples are or may be the following:—

1. Treason: participation with a foreign power, in acts or designs of hostility against the State.
2. Rebellion.
3. Evasion of Taxes.
4. Peculation: by undue means, producing, for gain to the individual, loss to Government.
5. False Testimony and other Offences against Justice: namely, in so far as no such special injury as above has place.

For the complete list, together with the expository matter, including correct definitions, and the Ratiocinative matter, see the Penal Code.

Expositive. Ratiocinative.

Art. 8. III. *Penal cases, publico-private.* These are those in which some assignable person having received special wrong in some assignable shape—the wrong, consideration had of the *alarm* or the ulterior *danger*, or both, to others, is considered as applying to persons *in general*, and as on that account presenting a demand, for suffering to be inflicted in the name of *punishment*.

Expositive.

Art. 9. Examples are the following:—

1. Homicide, except where justifiable.
2. Mutilation.
3. Disfigurement.
4. Disablement.
5. Highway Robbery—extortion by threats of immediate wrong by violence.
6. Robbery by Housebreaking.
7. Mendacious defamation.
8. Bigamy.
9. Forcible, or clandestine, or fraudulent abduction of a child from its parents.
10. Forgery, in relation to money, or transferable securities for money.

For a complete list, and expository matter, see the Penal Code.

Enactive.

Art. 10. In the exercise of his functions, the Government Advocate will be bound to officiate in the cases above-mentioned, on receipt of an appropriate mandate from the Judge, or an appropriate requisition from any Minister, in respect of demands produced by the business of such Minister's Subdepartment; such requisition being countersigned by the Prime Minister. Names of the instruments, 1. *Judges' Government Advocate's Service-requiring Mandate.* 2. *Ministers' Government Advocate's Service-requiring Mandate.*

Enactive.

Art. 11. In any one of those classes of cases, as per Art. 4, of his own motion he may, and if in his opinion, the public service requires it, he will, make application to the Judge to be admitted to give commencement to a suit, or continuance to a suit, already commenced by other hands. Name of the instrument, *Government Advocate's admittance Requisition.*

SECTION II.

Relation to Judge.

Enactive.

ART. 1. To the power of the Judge, as exercised by his several functions,—*imperative*, as per Ch. xii. Section 9, *Elementary Functions*, *sedative*, as per Ch. xii. Section 11, and *aid-compelling*, as per Ch. xii. Section 12,—the Government Advocate, in the same manner as any other actor on the Judicial theatre, or any private person, is subject.

Enactive. Expositive.

ART. 2. But, in case of misconduct in any shape on the part of the Judge, in a more especial manner than to any other such actor, to the Government Advocate does it belong to give information thereof to the several superordinate authorities: namely, to the Appellate Judicatory, by special and appropriate application, followed, if need be, by regular suit; and at the same time, through the medium of the Public-Opinion Tribunal, to the Legislative and Constitutive authorities, by any such means of publicity as the circumstances of the case afford.

Enactive. Ratiocinative.

ART. 3. On every such occasion, in virtue of his office, and in consideration of the special and appropriate means of information which, by reason of the situation and habits belonging to his office, he possesses,—it is matter not only of *right*, but of *duty*, for him to officiate: and, in case of any such misconduct, if it be sufficiently manifest, that neither the actuality nor the criminality thereof, were unknown to him, he may be sued, and made to suffer as an accomplice.

Enactive.

ART. 4. At sittings not constituted *secret*, the Government Advocate, in suits in which Government is not a party, has, like any other person, a right to be present. But, even in sittings so constituted, he has this right, exercisable in person or by depute.

SECTION III.

Functions in Non-Penal Cases.

Enactive.

ART. 1. In a non-penal case, a Government Advocate, acting as substitute to the Government in behalf of the State, performs the same service as a Law assistant, gratuitous or professional, to any private individual.

Enactive.

ART. 2. Exceptions excepted, in relation to any property, which, as belonging to the District, the Sublegislature thereof has at its special disposal, the Government Advocate acts as substitute for that same Local Government, in the same manner as for the General Government.

Enactive.

ART. 3. Exceptions are—

I. Where the General Government being on one side of the suit, the Local Government is on the opposite side.

Enactive.

ART. 4. II. Where, for the support of its interest in the suit, a special substitute is employed by the local Government. But in this case, unless in case of opposition of interests, as per Art. 3, the Government Advocate has concurrent authority with the Advocate of the local Government, in like manner as he has with a person in a purely public case, as per Section 4, and in a publico-private case, as per Section 5.

SECTION IV.

Functions in purely Public Penal Cases.

Enactive.

ART. 1. Exceptions excepted, in a penal case purely public, the Government Advocate is the established, and, in the ordinary course of things, sole pursuer.

Enactive.

ART. 2. Exceptions to his being sole pursuer are—

1. Where, on his own view of an offence committed in the Justice Chamber, the Judge has taken upon himself to convict and sentence, issuing the correspondent decrees *opinative* and *imperative*. This case will naturally be a rare one.

2. Where, on receiving an *informative* application from any other person, the Judge authorizes such person, and on his consent, orders him to continue it.

3. Where, by not regarding himself as having need of assistance from the Government Advocate, the person in question has, in the first instance, applied to be admitted as pursuer, and has been admitted accordingly.

4. Where, for the special purpose of the suit in question, the Government Advocate-General has deputed to serve as Government Advocate in any Judicatory, a person other than the Government Advocate of that same Judicatory.

Instructional. Ratiocinative.

ART. 3. If, in the case of any such offence, it depended on the Government Advocate alone, whether suit should be commenced, or when commenced, whether, or in what manner, it should be continued,—the power thus possessed by him being thus arbitrary would be much more efficient than the limited power of remission given, as per Ch. xxiv. Section 5,

Dispunitive function, to the Justice Minister. To apply to it the above, together with all other apt checks, will accordingly belong to the *Procedure* Code: see Ch. viii. Judicial Application.

Enactive. Instructional.

Art. 4. In every purely public penal case in which a person at large has been admitted pursuer, it is the right of the Government Advocate, and if, in his opinion, the public service requires it, his *duty*, to act in that capacity in conjunction with such person: so likewise to the exclusion of every such person, if, on application for reason assigned, he has been thereto authorized by the Judge.

Enactive. Instructional.

Art. 5. Of the purely public cases in which it may be of use to the public service that a person at large should be admitted to act as pursuer, in lieu of, or in conjunction with, the Government Advocate, examples are as follows:—

1. If, and where, on condition of his bearing the expense of pursuit, the law has given to a person at large, on condition of the conviction of the defendant, remuneration in any shape, at the charge of the convicted person, or from any other source.

2. Where, from any motive, public or private, a person at large, for better assurance, without any such reward, is willing to defray the expense: and in this case, where no preponderant objection has place, regard for the public purse will dictate such admission.

Instructional.

Art. 6. On every such occasion, as well the Government Advocate as the Judge, will be upon their guard, lest, at the commencement or in the course of the suit, the pursuer, with or without concert with the defendant, should be purposely acting in any manner, in the view of frustrating or obstructing the effect, or any part of the effect, professed to be aimed at by the suit.

Section V.

Functions in publico-private Penal Cases.

Enactive.

Art. 1. In a publico-private penal case, the Government Advocate has concurrent authority with the person or persons specially injured.

Enactive.

Art. 2. In a publico-private penal case, from and after hearing the evidence, as it comes out in the course of the original inquiry, it will belong to the Judge to determine whether the continuance and termination of it shall be allotted to the individual or individuals in question alone, or to the Government Advocate alone, or to the one and the other in conjunction.

Enactive.

Art. 3. If, on the occasion of any such suit, an individual, alleging special injury to have been received by him, or one for whom he applies, demands, at the charge of a defendant, money or money's worth, in compensation for such injury, his application for leave to act as joint pursuer will not be refused.

Instructional.

Art. 4. In this case, if he be able to defray the unavoidable costs of pursuit, the Judge will prefer allotting to him the conduct of the suit, unless, for prevention of undue favour towards a defendant, he deems it necessary to transfer it to the Government Advocate.

Section VI.

Functions as to Offences against Justice.

Enactive.

Art. 1. Whether the case be non-penal, or penal, to the Government Advocate it belongs, in a more especial manner, to watch over the interests of justice, by demanding, at the hands of the Judge, in the case of an *offence against justice*, committed by an individual on either side of the suit, a pecuniary mulct, the magnitude of which shall be in the joint ratio of the magnitude of the evil of the offence, of the profit reaped or aimed at by the offence, and of the pecuniary sufficiency of the offender. See Ch. xii. Judiciary collectively, Section 13, *Justice for the Helpless.*

Expositive.

Art. 2. By an offence against justice, understand an offence by which the attainment of any one of the ends, direct or collateral, of justice, is prevented or impeded.

Expositive.

Art. 3. To the attainment of the *direct* end of justice, impediment is opposed by falsehood, accompanied with evil consciousness, insincerity, or temerity of assertion. For expository matter, correct definitions included, see Penal Code and Procedure Code.

Expositive.

Art. 4. To the attainment of the *collateral* ends of justice, impediment is opposed by needless delay, and by all endeavours to obtain it.

So, by needless expense, imposed or endeavoured to be imposed, by any one party upon any other.

So, by needless vexation in any shape.

See Penal Code and Procedure Code, as above.

Section VII.

Money-requisitive Function.

Enactive. Expositive.

Art. 1. For engaging, at the hands of in-

dividuals, service necessary to the giving execution and effect to the law, in this or that shape, and in particular in the shape of evidence, the matter of reward, at the disposal of Government, will, in various cases, be found necessary; and, in divers of these cases, either the quality or the quantity of that same matter will necessarily remain unfixed by law.

For this purpose, a fund having been provided by the Legislature, and placed at the disposal of the Finance Minister, (such portions excepted, as under Ch. xii. JUDICIARY COLLECTIVELY, Section 13, *Justice for the Helpless*, are provided for the service therein mentioned,) to the Government Advocate of the Immediate Judicatory, in which the need arises, it belongs, so far as is needed for the occasion in question, to make application to the Judge, requesting his *Money-requisitive mandate*—requiring at the hands of the several persons exercising the *custoditive* function, in respect of the appropriate part of the above-mentioned fund, payment of the sums deemed proper, to the use of the person or persons for whom it is needed.

Enactive. Instructional.

ART. 2. In the instrument of requisition, according as, at the time of issuing it, the service in question has or has not been performed, entries will be made under appropriate heads.

Case I. The service needed, as yet unperformed: object of the reward, procuring performance: heads in this case will be the following:—

1. Nature of the service needed.
2. Occasion of the need.
3. Reward proposed, its quality.
4. Reward proposed, its quantity.

Enactive.

ART. 3. On receipt of any such petition, the Judge forthwith delivers it into the hands of the party or parties on the other side, calling upon them for an appropriate instrument, styled their *Paper of Observation on the Government Advocate's Money-requisitive petition.*

Enactive. Instructional.

ART. 4. In this *Observation paper*, the heads will be the following:—

1. Simple approbation or acquiescence.
2. Simple disapprobation—or
3. Modified approbation.
4. In case of disapprobation, or modified approbation, appropriate reasons.

From silence, at the end of a time appointed, acquiescence is inferred.

Enactive.

ART. 5. The Judge thereupon will either refuse the reward simply, or issue an appropriate instrument containing such description of the service and the reward as the occasion shall appear to him to require. Name of the instrument, a *Reward-offering mandate.*

Enactive.

ART. 6. Case II. The service already and without any such invitation performed. In this case the Government Advocate proposes *in terminis*, the mandate, by execution of which the proposed reward, according to the nature of it, will be conferred. Name of the instrument, a *Reward-conferring mandate.* Heads, and proceedings thereupon, will be, *mutatis mutandis*, as in Case I. as per Arts. 3, 4, 5.

Enactive. Instructional.

ART. 7. Exceptions excepted, proceedings are in this, as in all other cases, open, as per Ch. xii. JUDICIARY COLLECTIVELY, Section 14, *Publicity*, &c. Cause for exception by temporary secrecy may in this case be—danger, lest, from publicity, a delinquent derive means of evasion.

Enactive. Instructional.

ART. 8. This function, a Government Advocate is bound to exercise, wheresoever, in his opinion, preponderant evil, in the shape of failure of justice, would otherwise have place; or, with an adequate degree of probability, be likely to have place.

So, if directions to that effect have been received by him from the Government Advocate General.

Enactive. Instructional.

ART. 9. In every case, to prevent abuse in all shapes from the exercise of this function, will be among the Judge's, as also the Government Advocate's and the Eleemosynary Advocate's especial cares: in particular, abuse, in respect of undue advantage, openly or secretly, reaped by individuals, from needless reward, thus paid, at public expense, as for public service: especially in publico-private cases.

Enactive. Instructional.

ART. 10. On this as on other parts of the field of government, it may be that reward, as per Ch. ix. MINISTERS COLLECTIVELY, Section 15, *Remuneration*, may, on occasion, consistently with justice and economy, be conferred for extraordinary service, even though not invited, but already and spontaneously rendered. If, on the field of justice,—to the Immediate Government Advocate, the Eleemosynary Advocate, or the Government Advocate General, as the case may be, it will belong, for reason assigned, to make requisition for such retroactive reward.

Ratiocinative. Instructional.

ART. 11. In regard to the matter of reward considered as employed in this branch of the public service, there are several dangers that require to be guarded against.

One is, the giving reward where the service might be obtained without reward: obtained consequently without expense in that shape,

or to a greater amount in any other shape. Say reward needless.

Another is, where reward to a certain amount is necessary, and in a preponderant degree beneficial, the giving it in an amount greater than that same necessary and beneficial amount.

A third is, the giving it in such sort, as to give birth to offences of the very same species as those which the reward is employed in the endeavour to suppress.

Another point to be considered is, to what species of service the reward shall be attached.

On this occasion these species of service present themselves: namely, 1. Information, *i. e.* original evidence. 2. Subsequential evidence. 3. Prehension. 4. Information of means of prehension. 5. Information of means of securing execution. 6. Prosecution, meaning legal pursuit.

Instructional.

Art. 12. As to information or original evidence.

By the practice of attaching reward to service in this shape two effects of an opposite nature, maleficial and beneficial, are liable to be produced.

1. The *maleficial* is, the giving birth to the offence, by inducing one person to draw another into the commission of it, for the purpose of obtaining the reward, by information given of the offence when committed.

2. The *beneficial* effect is, the throwing difficulty in the way of criminal confederacies, by preventing men who otherwise might become confederates in criminality, from reposing in one another the confidence necessary for that purpose.

An object of endeavour will here be,—how to exclude the maleficial, retaining at the same time, with as little loss as may be, the beneficial effect.

Much will depend upon the class of offences to which the offence in each case belongs.

Instructional. Ratiocinative.

Art. 13. In regard to a publico-private offence, the injury will naturally of itself furnish an informer, and in his person, in so far as it has happened to him, to have been with relation to it, a witness,—an agent contributing to the prehension of the offender, or of anything capable of serving as a source of conviction-promoting real evidence.

It will, at the same time, have a tendency to furnish in the person of that same individual, a prosecutor—a pursuer.

But to this tendency there will always be a check, more or less efficient, according to the condition in life and pecuniary circumstances of this same injured party: namely, the delay, vexation, and expense attached to the exercise of this function—attached whether by natural only, or by artificial, superadded to natural causes.

The less the quantity of evil which in this shape stands attached to the function, the less will be the need, and thence the use, of reward attached to public service in this shape. If matters can be so managed, as that from burthen in the shapes above-mentioned, the injured party shall be exonerated altogether, all such exoneration will with no small degree of efficiency, operate in the character of reward. The reward held out by the chance of compensation, will, in so far as a fund capable of affording it is in existence, and within the reach of the hand of justice, be a branch, though but a contingent one, of the natural reward: of the reward naturally attached to the service. The pleasure of vengeance will, at the same time, afford another, and that a never-failing one: a reward, valuable in proportion to the strength of the corresponding appetite in the breast of the individual injured.

The result is—that so far as can be avoided, whatever matter of reward is thought fit to be granted for conviction-promoting information should, if determinate in quality, not be fixed or limited in quantity, by any general ordinance: nor at any rate, the receipt of it, made virtually absolute, and clear from all condition, over and above the delivery of the information or testimony, and the conviction of the delinquent.

If not only the shape be determined, but the quantum fixed, as also the condition determined as above, the natural consequence is, that regular and determinately grounded calculations will be made. From the practice of such calculations, two distinct evils will take their rise.

Instructional. Ratiocinative.

Art. 14. 1. In a case in which the reward will be clearly seen to be inadequate, it will be plain to all concerned, that no information will be given: and thence, that so far as depends upon the mutual perfidy, as between confederate and confederate, no danger will attach upon confederacy from this source.

2. In a case in which the reward is clearly seen to be adequate, it will operate as a source productive of delinquency, in the shape in which it is employed under the notion of preventing it: by the more artful of two malefactors, another who but for him, might have remained in innocence, will every now and then be inveigled into the commission of the crime, for the purpose of his being informed against, and convicted, that the reward held out for information, followed by conviction, may be earned.

Instructional.

Art. 15. If the service for which the reward is proffered, is that which is rendered by judicial pursuit—pursuit carried to the length of conviction,—evil consequence in a variety of shapes is the result.

The quantity of the expenditure in this

shape must be profusely large: large in itself, absolutely considered; large, when relatively considered, relation had to what would suffice for the production of information, or conviction-producing evidence, or both.

The quantity, how profuse soever, will still be insufficient in many an instance.

Instructional. Expositive.

ART. 16. Now as to the plan to be pursued for the production of the beneficial, without producing the maleficial effect.

For the production of the beneficial effect, namely, the preventing of those who would otherwise be confederates in crime, from reposing in each other the confidence that would be necessary for that purpose, it is not necessary that any one should stand absolutely assured, that at all events, any other would in case of effective information, stand assured of receiving the matter of reward in a determinate shape and quantity: without prejudice to this effect, the receipt might be left subject to a variety of contingencies, chosen for the purpose of putting an exclusion upon the maleficial effect. Let it be but understood, that in case of sufficiently assured need, the reward will be offered and given, though it be at the same time understood that if need do not have place, no reward will be given; this persuasion will be sufficient to create and preserve the salutary apprehension in minds in a certain degree disposed to calculation: while in minds to a certain degree indisposed and unused to calculation, no degree of determinateness given to the proffered reward would suffice to produce this same salutary effect.

SECTION VIII.

Attendance.

Enactive.

ART. 1. In a non-penal case in which Government is a party, the Government Advocate, on every occasion, in person or by Depute, attends of course.

Enactive.

ART. 2. So, in a purely public penal case, on every occasion after the initiatory application, if made by any other person, as per Procedure Code, Ch. xii.

Enactive.

ART. 3. So, in a publico-private penal case, when thereto required by the Judge.

Enactive.

ART. 4. Such attendance may be required by the Judge, either of his own motion or in compliance with a petition from a party specially interested.

SECTION IX.

Locable who.

Enactive.

ART. 1. Exceptions excepted, when among those who have paid attendance in the Inspector's gallery, there are those who, being of the age of 21 years, have thus attended in the character of probationary lawyers for two years, no person shall be locable in the office of Government Advocate, until he has so attended for two years: when there are those who have attended for three years, no person who has not attended for three years: and so on to five years: after which all must have attended five years.

Enactive.

ART. 2. An exception is—the case of those who, antecedently to the existence of persons so qualified as above, have served in the situation of Government Advocate Principal for not less than one year.

For other matters, see Ch. xii. JUDICIARY COLLECTIVELY.

CHAPTER XIX.

GOVERNMENT ADVOCATE GENERAL.

SECTION I.

Government Advocate General.

Enactive.

ART. 1. *Residence.* Resident in the metropolis, or wherever else is the residence of the Legislature, will be the Government Advocate General.

Enactive.

ART. 2. *Fields of Service.* Co-extensive with the whole territory of the state, and thence with the aggregate of the several local fields of service of the several Government Advocates, is his local field of service.

Enactive.

ART. 3. Co-extensive with the aggregate of theirs, is his logical field of service.

Enactive.

ART. 4. *Functions.* In relation to his own office, belongs to him the self-suppletive function, together with the obligation of keeping it in effectual exercise.

Enactive.

ART. 5. In relation to the several Government Advocates, he possesses the several functions locative, suppletive, inspective, directive, transferential, suspensive, and dislocative.

Enactive.

ART. 6. In virtue of his directive func-

tion, he will, in relation to any supposed offence or connected body of delinquency, as often as occasion calls, issue to the Government Advocates of different Immediate Judicatories, directions for instituting and carrying on pursuit against supposed delinquents, in any number, at the same time.

Instructional. Expositive.

Art. 7. The cases in which this complex mode of pursuit is most apt to be called into exercise, are those in which the same forbidden end has been pursued in concert, at the same time, by different delinquents, in mutually distant places.

Examples are :—

1. Treason.
2. Rebellion.
3. Contrabandism.
4. Forgery, and utterance in relation to public money.

Instructional. Ratiocinative.

Art. 8. In determining the Immediate Judicatories, in which, in each instance, pursuit shall have place, he will not forget the collateral any more than the direct ends of justice—the minimization of delay, vexation, and expense, to the supposed, but perhaps erroneously supposed, wrong-doer, as well as to parties wronged and witnesses,—any more than the conviction and punishment of the supposed wrong-doers, in the event of his being found guilty. Accordingly, he will not, except in case of necessity, (regard being had to the interests of all other persons interested,) issue a direction, in consequence of which, a defendant will have to be conveyed to a distance from his home, or his family connexions.

Instructional. Ratiocinative.

Art. 9. Lest the time demanded for more extensive, be absorbed by less extensive, duties, he will not himself act in ordinary as Government Advocate at the Immediate Judicatory, within the territory of which his residence is: that Judicatory having its own Government Advocate: but, in case of need, he has power to do so.

Enactive. Ratiocinative.

Art. 10. Of his own motion, or at the direction of the Justice Minister, in the exercise of his inspective function, he makes *Inspection* Visits, for the purpose of inspecting and taking cognizance of the conduct of the several Government Advocates, or any of them: of each such visit will be stated and made public the *reasons:* that is to say, the events or states of things, by which a demand, regarded as adequate, for the exercise of that same function, had been created.

Enactive.

Art. 11. *Term of Service.* Subject to dislocation, his term of service is for life.

Enactive.

Art. 12. *Located how.* He is located by the Prime Minister.

Enactive.

Art. 13. *Dislocable how.* He is dislocable for reason assigned by the Prime Minister.

Enactive.

Art. 14. He is dislocable at pleasure by the Legislature.

Enactive.

Art. 15. So also by the Constitutive authority, as per Ch. v. Sections 2, 3.

Enactive.

Art. 16. He is dislocable, for special delinquency judicially proved, by the Justice Minister; and, in that case, is not relocable by the Prime Minister.

Enactive. Instructional.

Art. 17. *Journal of Proceedings.* To his intercourse with informants, and to his correspondence with his Deputes and Subordinates above-mentioned, he will give temporary and provisional secrecy, in every instance in which he thinks fit: his order for secrecy being entered on the Record by the word *secret*, written by him, with his names, proper and official. The record will be a Journal of his official proceedings.

Enactive.

Art. 18. Exemplars of this Journal will be disposed of as follows :—

1. Kept in his office, one.
2. Transmitted to the Justice Minister, one.
3. Transmitted to the Prime Minister, one.

In both instances, the Journal of the day will be transmitted on the same day when minuted.

Ratiocinative.

Art. 19. Question. Why, over and above a Government Advocate in and for each Immediate Judge's territory, as well as one for each Appellate Judge's territory, establish one for the whole territory of the State?

Answer. Reason. Because there are many sorts of offences, in regard to which as well co-offenders, as witnesses on both sides, may have their abodes fixed and occasional, in the like-number of different Subdistricts, and in various Districts: and in no such Subdistrict or District would there be a Government Advocate, so well qualified by situation, to take an all-comprehensive view of the whole field of judicial action, as a functionary with the same functions stationed in the centre of the territory of the State, and habituated to the making of such all-comprehensive surveys.

Question. Why give to the Prime Minister the power of locating the Government Advocate General?

Answer. Reason. Because next under the Legislature, the business of the Prime Minister, being to give on every occasion execution and effect to the will of the Legislature as expressed by its laws, and he being responsible on that account to the Legislative and Constitutive authorities,—to no other functionary, or set of functionaries, can with equal aptitude be allotted the choice of the functionary on whom, in contested cases, is reposed the care of taking appropriate measures for securing the effectuation of that purpose.

Question. Why, with relation to the same subordinate give to the Prime Minister the power of dislocation?

Answer. Reason. Because without the power of dislocation, the power of location would not be sufficient to produce the effect: especially as, on the Prime Minister's coming into office, he would commonly have for this his immediate Agent in the Judiciary Department, an individual located,—not by himself, but by some predecessor in office.

SECTION II.

Government Advocate General's Registrar.

Enactive.

ART. 1. Attached to the office of *Government Advocate General*, is that of *Government Advocate General's Registrar.*

Enactive.

ART. 2. His relation to the Government Advocate General, is the same as that of the Registrar of an Immediate Judicatory to the Judge, as per Ch. xxi. Section 2.

Enactive.

ART. 3. His term of service is for life.

Enactive.

ART. 4. His attendance is the same as that of the Registrar of an Immediate Judicatory, and enforced by the same means.

Enactive. Instructional.

ART. 5. His remuneration is [ ] per day; received by him from unwilling hands, ulterior emolument is extortion—from willing ones, corruption.

Enactive.

ART. 6. He is locable out of the List of Immediate Registrars.

Enactive.

ART. 7. He is located by the Justice Minister.

Enactive.

ART. 8. He is dislocable by the Government Advocate General; but on appeal, relocable by the Justice Minister.

Enactive.

ART. 9. In other particulars, the sources and causes of dislocation are in this case, the same as in the case of the Registrar of an Appellate Judicatory.

Ratiocinative. Instructional.

ART. 10. Question. Why, in regard to the situation of Government Advocate General's Registrar, give the power of location, not to the Prime Minister, as in the case of that of the Government Advocate General himself, nor to the Government Advocate General—principal in the office,—but to the Justice Minister?

Answer. Reasons. 1. To the end that the authority of the Registrar may serve as a check upon that of the Government Advocate General. This it will do, partly by throwing, upon occasion, the light of publicity upon every act of the active functionary; partly by the danger which he would see impending over him, in the event of his exercising any act which in the view of this constant and irremoveable inspector, were an unwarrantable act.

At the same time, the Registrar not having a veto upon any act whatsoever, exercisable by the active functionary, neither frustration, nor so much as delay could be applied to any official act, which the Advocate might see reason to exercise.

2. The Justice Minister having this power, together with the inspective function, with reference to all other Registrars in the Judiciary Department, will, in respect of appropriate, cognitive, and judicial aptitude, be naturally possessed of a greater share of aggregate appropriate aptitude in relation to the choice, than could fall to the lot of a person occupying the situation of Prime Minister.

3. If the power of locating a successor were in this case in the same hands as the power of dislocating with reference to the functionary in possession, the result would be, a double interest in making a sinister application of the power of dislocating: namely, the advantage of getting rid of a troublesome inspector and eventual adverse witness, coupled with the advantage of locating in the person of a relative or other dependant, an ever ready accomplice. The benefit of the patronage, operates as a bounty upon the exercise of tyranny and oppression.

For other matters, see Ch. xv

CHAPTER XX.

ELEEMOSYNARY ADVOCATES.

SECTION I.

[illegible]

ART. 1. The [illegible] Judge, is in an Immedi[illegible] [illegible] field of

service of the Eleemosynary Advocate, or say the *Advocate of the Helpless.*

Enactive.

Art. 2. So also his logical field of service.

Expositive.

Art. 3. By the Advocate of the Helpless, understand a functionary who, on the occasion of a suit, or on any other occasion on which a person is admitted to make application to a Judge, acts as assistant or substitute, as the case may require, to every person, who, on that occasion, having need of such aid, is not of himself able to procure it at the hands of a professional lawyer, or any other person possessed of sufficient appropriate aptitude.

Enactive. Instructional.

Art. 4. It may be that, on each side of the suit, there exists a person having need of his assistance. In this case, he will locate two Deputes, one on the one side, the other on the other: or he himself may be on one. But, in any case, he will, in open judicatory, determine by lot on which side they shall respectively serve: saving to the Judge the power of determination, for reasons assigned.

Enactive.

Art. 5. *Rights* of the Eleemosynary Advocate. Exceptions excepted, in every suit he has a right to interpose on either side and offer his assistance.

Enactive.

Art. 6. An exception will be, if, the case being declared non-penal, and Government not a party,—the Judge, at the instance of all parties on both sides, shall think fit to inhibit such his interposition.

Enactive.

Art. 7. *Obligations* of the Eleemosynary Advocate. On every occasion, he is bound to afford his aid to every party, or other applicant, in relation to whom the Judge, at the request of such applicant, or of any other person on his behalf, or of his own motion, has declared himself satisfied, that such party or applicant is not of himself competent to make adequate provision for the support of his own cause, or able to procure adequate aid from any person competent and willing to aid him in the quality of substitute or assistant, professional or gratuitous.

Enactive. Ratiocinative.

Art. 8. On whichever side he be, if, consistently with sincerity, he cannot find anything to do, or say, in support of the interest of such his client, he will declare to that effect without scruple: of its sincerity, the declaration will have for Judges the several other actors on the Judicial theatre.

Section II.

Relation to Judge.

Enactive.

Art. 1. The same as that of the Government Advocate, as per Ch. xviii. Section 2, is, in an Immediate Judicatory, the relation of the Eleemosynary Advocate to the Judge.

Section III.

Directive Function.

Enactive.

Art. 1. *Directive function:* In Ch. xvii. Judicial Inspectors, and Ch. xxiii. Professional Lawyers, mention will be seen made of the service, which, during the latter half of their probationary period, Professional Lawyers are empowered to afford to the relatively *helpless.* Under the direction of the Judge, to assign to the several persons willing and competent, the several suits, in relation to which this their service shall be performed, is among the functions and duties of the Eleemosynary Advocate.

Expositive.

Art. 2. The Probationers so employed, will be so many Deputes occasional, located, and at all times dislocable, by the Eleemosynary Advocate.

Section IV.

Money-requisitive Function.

Enactive.

Art. 1. Correspondent to that of the Government Advocate, as per Ch. xviii. Section 7, is, in an Immediate Judicatory, the Money-requisitive Function of the Eleemosynary Advocate. It is coextensive with the whole of his logical field of service, as per Section 1.

Enactive.

Art. 2. Procedure, the same in this case as in that.

Enactive.

Art. 3. So, obligation, need of caution, and power of making requisition of retroactive reward.

Section V.

Super-tutelary Function.

Enactive. Expositive.

Art. 1. *Super-tutelary, or say Guardianship-inspective function.* In the exercise of this function, the Eleemosynary Advocate keeps a watchful eye on the conduct, maintained by guardians of all sorts, on the occasion of suits of all sorts; and on observation made of a

deficiency, on the part of a guardian, in respect of appropriate aptitude in any shape, on the occasion of any suit, or other judiciary application, he gives intimation thereof to the Judge, and demands at his hands all such apt judicial operations as may be necessary to obviate the apprehended detriment.

Instructional. Ratiocinative.

ART. 2. On all other occasions, in case of any such apprehended deficiency, to apply for relief to the Judicatory will belong to any well-disposed person, under whose observation it may have happened to fall: in which case, the applicant will be either the ward himself, or some friend of his, according to circumstances. But, on the occasion here in question, should any such deficiency take place, no person, were it not for this functionary, would in general be so situated as to be capable of making observation of it.

Instructional. Ratiocinative.

ART. 3. At the same time, this is the sort of occasion, on which, above all others it might be in the power of a guardian, by deficiency in appropriate intellectual or active aptitude, to occasion to the ward the greatest detriment, and by deficiency in appropriate moral aptitude, to himself the greatest sinister benefit: for, for example, by confederating with this or that other person, and demanding by a suit the whole property of the ward, he might, by means of a purposely weak defence, share with such person in the amount of it: or by needless addition, with or without confederacy with a Professional Law Assistant, derive to himself or others undue profit out of the expense.

Instructional. Ratiocinative.

ART. 4. True it is, that the Judge, should such mal-practice fall under his observation, would of course do what depended on him towards obviating it. But, symptoms which might escape the observation of the Judge, might be descried by a functionary, whose duty it were made in a more especial manner, to be on the watch for their appearance: and moreover, should the Judge have been the first to descry them, here is a functionary who, with undivided attention, might act as advocate of the party, while, in relation to this same business, the Judge would with undivided attention, continue acting in his peculiar and more appropriate character of Judge.

Enactive. Expositive.

ART. 5. Correlative to the condition of *Guardian*, is that of *Ward*. Wards, or say *persons in wardship*, or *under guardianship*, are these which follow:—

1. *Non-adults:* persons not yet arrived at the age at which they are invested by law with the entire disposal of their persons and property.

2. *Insanes:* persons of unsound mind: persons who, on the ground of deficiency in intellectual or active aptitude, in respect of the conduct of their own actions, or in the management of their own property, have been placed under the authority of some guardian, in the same manner as a *non-adult*, under that of his Father, or other Guardian.

3. *Prodigals, convict or suspected:* persons, if any such there be, whose property, to preserve it from being further wasted, to the detriment of themselves and their family connexions, has been placed in sequestration, under appropriate Guardianship.

4. *Married women*, in so far as by law placed, in respect of their property, in the power of their husbands.

For other matters, see Ch. xii.

CHAPTER XXI.

IMMEDIATE AND APPELLATE JUDICIARY REGISTRARS.

SECTION I.

Fields of Service.

Enactive.

ART. 1. Coextensive with that of the Judge, is the Judiciary Registrar's *local* field of service.

Enactive.

ART. 2. So that of his *logical* field of service.

SECTION II.

Relation to Judge.

Enactive. Instructional.

ART. 1. For the verity, correctness, clearness, all-comprehensiveness, conciseness, compactness, and symmetry, of the aggregate of the several minutes taken by him or under his direction, the Registrar is responsible. As to the original minutes, separately taken, of discourses, uttered in the Justice Chamber, whether by a testifier, litigant or extraneous, or by any other actors on the Judicial theatre, correctness and all-comprehensiveness are, of course, of all those qualities the only ones for which, in the nature of the case, he can be responsible.

Enactive. Instructional.

ART. 2. The Registrar is bound to make entry of every portion of discourse of which the Judge requires him to make entry: but, in such case, if to make entry thereof, would not, in his opinion, otherwise belong to his office,—as to everything thus entered, he notes, upon the face of the entry, all the several words thus set down, in compliance with the requisition so made by the Judge, calling upon the Judge, by his signature, to attest, or contest, the correctness of such note.

Expositive.

Art. 3. To cause obliterate any word, entry of which has been made, by, or by direction of, the Registrar, would exceed the power of the Judge.

Enactive.

Art. 4. If, when a Judge Depute permanent sits, the Registrar does not either sit with him, or provide a Registrar Depute to sit with him, the Judge, Principal or Depute, appoints a Registrar Depute to sit for that day's sitting: entry is made of the deficiency, and the Registrar is compensationally and punitionally responsible for it.

Enactive.

Art. 5. So, when a suit is allotted to a Judge Depute occasional.

Section III.

Effective Functions.

Enactive.

Art. 1. To the Registrar, in each Immediate Judicatory, belong three distinguishable classes of effective functions,—the *Subjudiciary*, or say *Litiscontestational*, the *Providentiary*, and the *Financial*.

Expositive.

Art. 2. By the *Subjudiciary*, or say *Litiscontestational* functions, understand those functions, need for the exercise of which does not take place till after the commencement, or in contemplation of an individual suit, or of an application which, being made to a Judge, may terminate in a suit. See *Procedure Code*, Ch. viii. Judicial Application.

Expositive.

Art. 3. By the *Providentiary* functions, understand those which are exercised—not on the sole occasion of any individual suit commenced, or intended to be commenced, but in contemplation of some future contingent suit, individually contemplated or not, on the occasion of which, it may happen that the matter in question, if recorded, may be of use. It is by the exercise of these functions that existence is given to the species of evidence styled *pre-appointed* evidence.*

Expositive.

Art. 4. By *pre-appointed* evidence, understand evidence by which information is preserved concerning any fact, which, as to a *right* of any kind, is of a nature to produce, or to contribute to produce, either a *collative* or an *ablative* effect.

* As to this and other matters relating to *evidence*, see the author's work on Evidence, in vol. vi. and vii.

Expositive. Instructional.

Art. 5. Of this species of evidence, the effect and object is the preventing well-grounded rights from being frustrated,—thence well-grounded expectations from being disappointed, and pain of disappointment from being produced,—for want of the creation or preservation of the appropriate grounds, on and by which they would and should respectively be established. Hence the appellation *providentiary*, applied to distinguish the functions, by the exercise whereof, existence and duration are given to this species of evidence.

Enactive.

Art. 6. Exceptions excepted, such pre-appointed evidence having its birth—not in the Judicatory, but in the office of the Local Registrar, as to whom see Ch. xxvi. Local Registrars, the *effective functions* relative to documents thus brought into existence, are no others than those which arise out of the communication made thereof from the *Local Registrars* to the *Judiciary Registrar's* office.

Enactive.

Art. 7. Exception 1. Minutation, by which existence is given to extrajudicial *narational pre-appointed evidence*, in compliance with an appropriate application made for that purpose in the Judicatory: forasmuch as the minutative elementary function thus applied, belongs in common to the Judiciary Registrar of the subdistrict, and the local Registrar of the Bissubdistrict: the applicant having his choice. But of a mass of this sort, when brought into existence by the Local Registrar, an exemplar will be transmitted by him to, and kept by, the Judiciary Registrar.

Enactive.

Art. 8. Exception 2. Minutation, as applied to the several discourses, held in consequence of application, made in any of the several modes in which it may be made, to a Judge, as such, without giving commencement to a suit. Instance the sort of application by which, as per Ch. xii. Judiciary collectively, Section 22, the exercise of the Judge's *pre-interpretative* function is requested. As to this and the other modes of judicial application, see *Procedure Code*, Ch. viii.

Expositive.

Art. 9. By the Registrar's *Financial* functions, understand those exercised in relation to the monies intrusted to his custody, for furnishing the pay of the several other functionaries belonging to the Judicatory, and defraying the several other expenses thereof.

Enactive. Expositive.

Art. 10. Included in the fund composed of the aggregate of these monies, will be the elementary masses following.

1. Produce of the mulcts imposed by the Judge.

2. Monies transmitted to the Judicatory by the Finance Minister, for the filling up of such deficiencies as have place in the supply afforded from the several other sources.

SECTION IV.

Elementary Functions.

Expositive.

ART. 1. By the Registrar's *Elementary* functions, understand those, the conjunct exercise of which is, in the ordinary course of his business, necessary to the discharge of his *effective* functions, as per Section 3.

Expositive.

ART. 2. I. Elementary functions included in the *Subjudiciary*, or say *Litiscontestational effective* functions, are—

1. *Auditive*, as applied to oral discourse, for the purpose of minutation.

2. *Inspective*, as applied to written discourse, or to any other visible document, for the same and other purposes: or incidentally, to any visible occurrence that happens to have place.

3. *Lective*, as occasionally applied to written discourse.

4. *Interrogative*, on the occasion, and for the purpose, of *minutation*.

5. *Minutative*, whereby the result of the exercise of the above functions is committed to writing: to wit, either in the *manifold* way at once, as per Ch. viii. PRIME MINISTER, Section 10, *Registration System*, or preparatorily thereto, in the ordinary way, by pen and ink.

6. *Commentative*, for the incidental purpose of giving elucidation to the result of the exercise of the *minutative* function: or to the *percontative*, *argumentative*, or *opinative* matter of the discourses of any other of the actors on the Judicial theatre: or to the similar matter, together with the *imperative* matter, of the discourses of the Judge.

7. *Attestative* or *recognition-exacting*. By this function, when minutation has been made of a portion of discourse uttered by a testifier, litigant or extraneous, his signature in acknowledgment of the correctness of the minute is elicited: to wit, after such discussion and modification as may happen to be necessary to preserve him from the insincerity of giving, as and for his discourse, anything which, in truth, is not so. See below, 11, *Authenticative*. For the mode of attestation, see Section 5, *Minutation how*.

8. *Receptive:* to wit, as to the several matters, communication of which comes to be made *to* the Judicatory from any other quarter.

9. *Accersitive:* to wit, in so far as any matters which, requiring to be *communicated* to the Registrar, require to be *called for*, in order to their being communicated.

10. *Communicational:* to wit, as to the several matters, of which communication comes or requires to be made *from* the Judicatory to any other quarter.

11. *Authenticative:* to wit as to *indigenous* portions of written discourse: *indigenous* with reference to the Judicatory. This function is in itself the same with the *attestative*.

12. *Authenticative*, as to portions of written discourse and other tangible objects *extragenous:* to wit, brought into existence in any other quarter than that just mentioned, and from thence brought thither.

13. *Custoditive:* to wit, as to portions of written discourse and other tangible objects, *indigenous*, as above.

14. *Custoditive*, as to portions of written discourse, and other tangible objects *extragenous*, as above.

15. *Sub-directive:* to wit, as to the official conduct of all ministerial judicial functionaries, by or through whose instrumentality the above functions *minutative*, *receptive*, *communicational*, and *custoditive*, are exercised: sub-directive, to wit, under the Judge.

16. *Access-affording*. In the exercise of this function, the functionary will afford access to all the several documents in his custody, whether for the purpose of simple inspection, of lection, or of transcription, as need may require: maximizing, in the instance of each person, the facility of access for these several purposes: always in so far as shall be consistent with the like facility to every other person, as also with the exclusion of preponderant evil, whether from the consumption of the keeper's official time, or from obstruction to the exercise of his several other functions as above.

Enactive. Expositive.

ART. 3. II. Elementary functions included in the *Providentiary effective* functions, as applied to the documents emaning from the Local Registrars Office, are—

1. The *Receptive:* exercised by the receipt of those same documents.

2. The *Acceptational:* exercised in each instance by the minutation, with or without the delivery, of a document, testificative of the fact of such receipt. Name of this document, the word *receipt*, preceded by the name of the species of document received.

3. The *Custoditive:* exercised by the keeping of these same documents.

4. The *Requisitive:* exercised by requiring the delivery of them when not spontaneously delivered.

Enactive. Expositive.

ART. 4. III. Elementary functions included in the *Financial effective* functions, are—

1. The *Receptive:* exercised by the receipt of the money in question.

2. The *Acceptational:* exercised in each instance by the *minutation*, with or without the *delivery*, of a document, *testificative* of the fac

of such receipt. Name of this document, a *Money receipt.*

3. The *Custoditive:* exercised by the keeping of those same monies.

4. The *Requisitive:* exercised by requiring the delivery of them, when not spontaneously delivered.

5. The *Transmissive:* exercised by the transference of them to other hands, in proportion as they are applied to their respective uses.

Section V.

Minutation, how.

Enactive. Expositive.

Art. 1. In the exercise of his litiscontestational functions, the Registrar commits to paper, not only the relevant discourses, which, while sitting in the Justice Chamber, have been heard by him, but also statements of all the several relatively influential occurrences, information of which has reached him: setting them down at the times at which they have respectively reached him.

Expositive.

Art. 2. By relatively influential, understand all such occurrences, by which the commencement or termination of a suit may come to be produced, or the course taken by it during its continuance, or the effect produced by it after its termination, modified.

Expositive.

Art. 3. Relatively influential occurrences include,—

1. All relatively influential *acts*, performed in the Judicial theatre, by parties, witnesses, or any other actors; or elsewhere, by any of the ministerial judiciary functionaries, stationary or missionary, or any other persons at large.

2. All relatively influential *physical occurrences*, to which it may happen to have had place, whether in the Justice Chamber or elsewhere.

Expositive.

Art. 4. By *acts*, understand not only *positive*, but *negative* acts: not only acts of compliance, for example, but also acts of non-compliance: for instance, an act of non-compliance in relation to a decree or order of a Judge.

Expositive. Instructional.

Art. 5. Subjects of *concomitantly statistic* minutation, are those occurrences which, as per Art. 3, have place at the moment in the Judicial theatre; subjects of *subsequentially statistic* minutation, are those which, having come into existence at some other time and place, have no otherwise been brought under the cognizance of the Registrar, than by means of information furnished to him at times respectively subsequent to those at which they respectively took place: the entries made of them respectively will be made either in *different* books, or of the *one* species of occurrence, on the left hand page, of the *other*, on the right hand page of the *same* book.

Expositive.

Art. 6. Certain acts there are, whereby existence is given to so many masses of written discourse, by the aggregate of which the business of judicature is in great part carried on. These acts are *judicial operations*, and the writings *judicial instruments*. For the diversifications of which they may be susceptible, see the *Procedure Code*, Ch. vi. All-comprehensive Arrangements.

Expositive.

Art. 7. Considered in respect of any influential information which it may be in the nature of them respectively to afford, these, amongst others, are moreover styled *documents*.

Expositive.

Art. 8. *Unminuted Suits.* Consideration had of the simplicity of the inquiry, and the comparative unimportance of the matter in dispute, the Legislature will determine whether suits of any and what description, may be heard and determined, without minutes taken of the evidence, as above: always remembering, that in so far as money is concerned, importance is not absolute—depending solely on the magnitude of the sum—but relative; relation had conjointly to the magnitude of the sum, and the pecuniary circumstances of the parties. Such suits style *unminuted suits*.

Expositive.

Art. 9. Of demands to which it may happen to be regarded as fit to be heard and determined on, as *unminuted* suits, examples are as follows:—

1. Demands on the ground of *simple corporal vexation:* vexation not accompanied with permanent bodily harm, inflicted or intended.

2. Demands on the ground of ordinary debt. Demands, claiming money on the ground of service rendered in the most frequently exemplified shape. Examples are as follows:—

1. Goods sold and delivered.
2. Serviceable labour, whether of body or mind, or both; performed for a price, whether determined or undetermined.
3. Lodging, with or without board, afforded.

Enactive.

Art. 10. But, forasmuch as, by reason of the situation of a party concerned, or other circumstances, it may happen that a case belonging to a sort not commonly worth recording, may present an adequate demand for recordation,—care will be taken that to any individual case ranked in the class of *unminuted* suits, minutation shall be applied, at the instance of any party, on payment of a price to the Equal Justice fund, as per Ch. xii. Section 13, *Justice for the Helpless;* or, if on

account of the pecuniary circumstances of the party requiring it, or on any other ground the Judge sees reason, without payment of a price.

Enactive.

ART. 11. In an *unminuted* case, the evidence alone will be omitted: but of all other relatively influential circumstances and occurrences, such as the name of the Judge, the Registrar, the day, the names of the parties, the subject matter of the demand, the ground of the defence, if any, and the decree,—entry will be made: and moreover, an *Incidental Complaint Book*, as per Ch. xii. Section 18, ready for the eventual reception of complaints, will be at hand.

SECTION VI.

Attestation how.

Enactive. Expositive.

ART. 1. Necessary is this operation and the exercise of the corresponding elementary function, as per Section 4, to the securing of full and sufficient credence to the genuineness of a portion of discourse, delivered by any person other than the Registrar himself. The mode of exercising it is as follows:—

Whensoever, by word of mouth, a portion of discourse has been uttered, which is deemed to be of a nature to require that it be expressed in writing, and that entry be thus made of it, in some book belonging to the office, the Registrar, for the better assurance of the correctness and completeness of such entry, will present to the person whose discourse it was, or is supposed to have been, the *minute*, in which expression is thus given to it, calling upon him either to admit or deny the correctness and completeness of it.

Enactive. Expositive.

ART. 2. This being done by the Registrar, now as to the person whose discourse it purports to be. Relation had either to the whole of the minute so tendered, or to this or that part of it, one or another of the three following courses, he cannot fail to take. The alleged correctness and completeness of it, he will either *admit*, *refuse*, or *evade the admission of*: evade by silence, for example, or irrelevant or insignificant discourse.

Enactive. Expositive.

ART. 3. In case of *admission*, the Registrar will call upon him to give thereto in writing, the appropriate expression: to wit, at the end of the portion of discourse in question, writing his name in all its parts: if unable to write, making, instead of his name, the mark of a cross, as thus ·|·, or any other simple mark, such as no person, who has the use either of hand or mouth, can be at a loss to make: and to this mark the Registrar will, in his own hand, add the name of the person in question, as recognised by him, followed by the words, "*his mark.*"

Enactive.

ART. 4. So, likewise, if it be a portion of written discourse delivered in by him as his: in this case, to his name he will prefix the words, *This discourse is mine*, or simply *my discourse.*

Enactive.

ART. 5. So, likewise, if it be a portion of discourse, delivered in by him, as and for the discourse of some other person or persons, known or unknown: and if known, instead of the word *mine*, inserting respectively the name or names, description or descriptions, of these same persons.

Enactive.

ART. 6. In case of refusal or evasion, as per Art. 2., the Registrar will inform him, that, unless the faculty of amending it be desired by him, and afforded to him, as per Section 7, *Minutation—Amendment how*, the correctness and completeness of the minute will be considered as having been nevertheless inwardly and virtually recognised by him.

Enactive.

ART. 7. The Judge will thereupon either concur in testifying the recognition,—for example, by his signature to the words *virtually recognised*,—or, after hearing any such declaration on the subject, as any of the persons present shall have been desirous to make, he will take such course as the circumstances of the individual case shall have suggested, for establishing the existence of the matter of fact, the acknowledgment of which was thus evaded.

Enactive.

ART. 8. In so far as the individual denies either the correctness or the completeness of the minute in relation to the discourse actually uttered by him, by word of mouth, the Registrar, if, nevertheless, assured of its *correctness* and *completeness*, will make entry of such his assurance, and call upon any of the persons present to express, by his signature, each of them, his assent to, dissent from, or ignorance in relation to, its possession of those qualities, respectively.

SECTION VII.

Minutation—Amendment how.

Expositive. Instructional.

ART. 1. Of this operation, the eventual need grows out of the minutative and attestative functions. On the occasion of any discourse uttered, as per Section 6, what may happen is, that though by the utterer the correctness or completeness of the account given

of it in the minute, is not questioned, he himself on recollection, for the purpose, real or pretended, of giving additional correctness or completeness to the statement made by himself, or, at the suggestion of some other person,—the Judge or the Registrar, for example, —may be desirous to make therein, in the way of addition, subtraction, or substitution, to wit, in any one or more of these ways, a more or less considerable change.

Enactive.

Art. 2. Exceptions excepted, in any such case the Registrar will afford the requisite facilities. But, for a standard of comparison, he will in every case keep, in the Registry, an exemplar of the minute in its original state: and of this original minute, he will add an exemplar, to every exemplar which he anywhither transmits, of the minute by which the amendment is exhibited.

Enactive.

Art. 3. On any such occasion, the mode of proceeding will be in manner following:—Antecedently to his departure from the Justice Chamber, if time and the quantity of the written discourse will allow, (if not, as soon afterwards as may be,) the Registrar, at the requisition of the individual, delivers to him an exemplar of such part of the matter of the record as purports to be composed of his statement, as above.

Enactive.

Art. 4. To this minute, within a time allotted on the delivery thereof by the Judge, of which time entry is made, the witness is at liberty to make amendments, in any one of three ways, to wit—

1. By giving, in the exemplar itself, expression to the several intended alterations, whether by addition, subtraction or substitution.

2. By delivering a separate paper, giving instructions for the making thereof.

3. By delivering another paper, with his desire as expressed on the face of it, that it may be accepted instead of the paper delivered to him, or instead of such sheet or sheets of it as he points out.*

Enactive.

Art. 5. On receipt of such amendments or instructions, the Registrar causes make a fresh set of manifold exemplars of the matter of the amendments, retaining for confrontation the minute in its original state: to the individual he delivers, to be retained by him, a manifold exemplar of the evidence in each of its states.

Enactive. Instructional.

Art. 6. The expense, occasioned by such amendments, will, according to the determination of the Judge, be borne either by the individual or by the public: regularly by the testifier by whom it was occasioned: but in consideration of his pecuniary circumstances, or of the exigencies of the case, it may, by the Judge, be placed to the account of the public.

Enactive. Instructional.

Art. 7. If it be not by the Registrar, or a Depute of his, that such scription is performed, the expense will, in either case, consist in the remuneration given to some appointed scribe, who will be paid at the rate of such or such a sum, for such or such a number of words: to the Judge it will in this case belong to take care, lest, for the undue augmentation of the profit to the scribe, or by wantonness or sinister design on the part of the individual in question, the quantity of the matter, receive undue increase.

Enactive. Instructional.

Art. 8. If, and in proportion as, through carelessness, wantonness, or sinister design,—obstruction, and thence evil to a preponderant amount, to the proceedings of the Judicatory, is produced or endeavoured to be produced, by any such individual, as above—to wit, either on the occasion of authentication performed by attestation, as per Section 6, or on the occasion of amendment, as per this Section—the Judge, for the repression of such abuse, will apply such punishment as in his judgment is necessary and sufficient, subject to any ordinance made in relation to this matter, in the *Penal* Code. For the mode of proceeding, see Ch. xii. Judiciary collectively, Section 18, *Incidental Complaint Book.*

Enactive. Instructional.

Art. 9. For a more precise, particular, and complete enumeration, description, and particularization of matters destined, on this occasion, to be entered in the Register, see the Procedure Code.

See also Ch. ix. Ministers collectively, Section 7, *Statistic function.*

Section VIII.

Securities for appropriate Aptitude.

Enactive.

Art. 1. When once, by or by direction of the Registrar, a word has been entered on the Register, to obliterate it, or allow it to be obliterated, in such sort as to be no longer legible, or to alter it, or allow it to be altered into any other word, would be an act of falsification, and as such punishable: so likewise

* Such as delineated in Arts. 3, 4, is the mode commonly employed, on the receipt and extraction of evidence, in the select committees of the English House of Commons. Witness, in the situation of testifier, the author's own experience. Where the occasion warrants by its importance, the delay, vexation, and expense,—this mode might and should be practised in *all* Judicial, or other government inquiries: scarcely is it in *any* other.

the making addition of any word, at any succeeding time. By drawing a line of a different colour across, correction may, however, at all times be in so far applied to error in any shape, when discovered. But, in every such case, entry must be made of the fact of the correction, with the year, month, day of the month, and hour when made, and at length or by initials, the name of him by whom the correction is made.

Enactive.

ART. 2. Whatsoever entry is made by the hand of a Registrar Depute, is signed by him, with a sufficient designation of the person, in the same hand, at the same time.

Enactive.

ART. 3. To cause make on the Register any portion of written discourse, without the consent of the Registrar, belongs not to any other actor on the Judicial theatre. But, to any such actor it belongs, to frame or cause frame a minute of his own, and to tender it to the Registrar for his assent or dissent, as to its relevancy and correctness: and such assent or dissent, the Registrar is bound to signify, namely, with his family name, and name of office, at length, or by initials in the margin.

Enactive.

ART. 4. On the ground of alleged irrelevancy, injuriousness, or even criminality, in any shape, it belongs not to the Registrar to refuse or omit making entry of such assent or dissent: if the discourse be injurious or criminal, it will stand as evidence of the impropriety of him by whom it was made.

Enactive. Ratiocinative.

ART. 5. Designed to act as mutual checks upon each other, are the several official situations of the Judge and the Registrar. If, on the occasion of any suit, by negligence or collusion, the Registrar were to omit providing a Depute of his own to act with the Judge, the Judge, by the location of any person of his choice to officiate in the character of Registrar Depute, might on every such occasion deprive the interests of justice of the benefit of this check. To this reason it is, that while by Section 2, to prevent denial or delay of Justice, provision is made against any such deficiency, the Registrar who, by acceptance of his office, undertook for the prevention of it, is, by Section 2, Art. 4, made responsible.

SECTION IX.

Migration, none.

Enactive. Ratiocinative.

ART. 1. A Registrar does not migrate.

To prevent the formation of sinister connexion between two parties, it is not necessary that both should change place. The more intimate his acquaintance with the matter exhibitive of the proceedings of anterior times, in the same place, the greater will be a man's aptitude as to the functions of this office.

For other matters, see Ch. xii.

CHAPTER XXII.

APPELLATE JUDICATORIES.

SECTION I.

Appellate Judges, who.

Expositive.

ART. 1. By an Appellate Judge, understand a Judge having cognizance of Appeals.

Expositive.

ART. 2. By an appeal, understand an application made to a Judge, superior in grade and power, by a suitor in an Immediate Judicatory subject to his authority, alleging error, in a specified shape, as having had place in the conduct of a Judge Immediate, in relation to a particular suit, and thereupon claiming relief, in some form specified, according to the nature of the case, at the hands of the Judge so appealed to.

Enactive. Expositive.

ART. 3. A ground for appeal may be constituted by inaction, as well as by action: of the one as well as of the other, on the part of a Judge, injustice may alike be the result. As to this, see Section 3.

SECTION II.

Fields of Service.

Enactive.

ART. 1. Of the service of an Appellate Judicatory, the *local* field includes in it the local fields of service of a certain number of Immediate Judicatories.

Enactive.

ART. 2. So, the *logical* field: except in so far as modified by the provisions contained in this, and the ensuing sections.

Enactive.

ART. 3. Exceptions excepted, to no Appellate Judicatory belongs any immediate jurisdiction.

Enactive.

ART. 4. Exceptions are—

1. Complaints of misconduct, in any of the shapes mentioned in Ch. xii. Section 18, *Incidental Complaint Book.*

2. Non-transmission of the Record, or vicious state thereof, as per Section 4, Art. 2, here ensuing.

Section III.

Subject Matters of Appeal.

Enactive. Expositive.

Art. 1. Of an Appeal, and thence of the service of a Judge Appellate, the subject matter is either ordinary or incidental.

Enactive. Expositive.

Art. 2. By the incidental subject matter of an Appeal, understand misconduct in any shape mentioned in the provisions relative to the *Incidental Complaint Book*, as per Ch. xii. Section 18.

Enactive. Expositive.

Art. 3. The ordinary subject matter of an Appeal is either alleged *misdecision* or alleged *Quasi-misdecision*, on the part of the Judge Immediate.

Expositive.

Art. 4. By *Quasi-misdecision*, understand any act of the Judge, negative acts as well as positive included, whereby, otherwise than by definitive decision, wrong the same in effect, as might have been produced by definitive misdecision, is produced.

Enactive. Expositive.

Art. 5. Of the ways in which, without definitive misdecision, the wrongful effects producible by it are capable of being produced, examples are as follows:—

1. Denial, direct or virtual, by act positive or negative, of necessary or material means of proof or disproof. By *virtual denial*, understand *non-feasance*, in any instance in which feasance is prescribed by justice.

2. Or, of any such eventually necessary means of execution, for the execution of such judicial orders as the nature of the case calls for: provisional prehension of the person or goods of a defendant, for example.

3. Or, of the judicial service, necessary to the enforcing of compliance with any such judicial orders: compliance, whether at the hands of parties, witnesses, judicial functionaries, or persons at large.

4. In particular, of any means of mutual communication, necessary to such compliance, on the part of any such persons, as above, as between one another, or between any of them and the Judge.

5. Or, of due execution of definitive decrees actually pronounced, supposing them such as the nature of the case demanded.

Note that in every instance, necessary to communication, whatsoever be the objects between which it is to have place, is the appropriate quantity of *time* requisite.

Enactive. Expositive.

Art. 6. Of the means whereby, in an indirect way, ultimate misdecision is producible as above, examples are as follows:—

1. *Undue delay, vexation, and expense:* 1. delay practised or permitted, in consequence of which, means of probation or execution perish, are deteriorated, or become unobtainable; 2. vexation inflicted or permitted to be inflicted; 3. expense imposed or permitted to be imposed, on persons destitute of the means of defraying it, and of thereby keeping themselves in the way of obtaining justice.

2. *Precipitation:* namely, by this or that judicial operation, the performance of which has for its effect, the preventing the performance of this or that other operation, the performance of which was necessary to right decision: for example, the obtainment of the necessary means of probation.

Enactive.

Art. 7. For explanations and provision in detail, as to these several matters, see the Procedure Code.

Section IV.

Grounds of Decision.

Enactive.

Art. 1. Exceptions excepted, in an Appellate Judicatory, the *sole* grounds of decision receivable are as follows:—

1. The matter of the record, as transmitted from the Immediate Judicatory: in which matter is contained the whole of the evidence belonging to the case.

2. Argumentation heard from the mouth of the parties or their assistants, gratuitous or professional, on both sides of the suit, or parties and assistants likewise: which argumentation has for its sole basis, as above, the matter of the record, or any portion of it.

Enactive.

Art. 2. Exceptions are:—

1. If no record at all has been transmitted from the Immediate Judicatory.

2. If, by an Appellant, the matter so transmitted is objected to, as being in a material degree incomplete or incorrect.

In these two cases, also, Appeal may be received.

Enactive.

Art. 3. For supply of evidence, the existence of which has not been discovered till subsequently to the definitive decree pronounced in the Immediate Judicatory, the Judicatory to be applied to is—not the Appellate, but the Immediate Judicatory.

Enactive.

Art. 4. So, if not till subsequently to the delivery of the definitive decree of the Appellate Judicatory, or even subsequently to execution given to it.

Enactive.

ART. 5. At the Immediate Judicatory itself must have been delivered all evidence, on which Appeal therefrom, complaining of alleged *Quasi-misdecision*, is grounded: unless the receipt, recordation, or transmission of such evidence, or any material part thereof, be directly or virtually refused.

SECTION V.

Quasi-Jury necessary.

Enactive.

ART. 1. As on the occasion of a *recapitulatory* examination in an *Immediate* Judicatory, so on the occasion of the examination in an *Appellate* Judicatory, necessary to the validity of what is done, is the presence of a Quasi-Jury, as well as of such Judicial Inspectors as the place and time afford.

Enactive.

ART. 2. Exceptions excepted, from no definitive decree, pronounced otherwise than on a *recapitulatory* examination, as per Ch. xvi. QUASI-JURY, Section 1, can any Appeal be received. From a definitive decree pronounced at the close of an original inquiry, the only appeal being the appeal from the Judge, *without* a Quasi-Jury, to another or the same Judge, *with* a Quasi-Jury, as per Ch. xvi. Section 1.

Enactive.

ART. 3. Exceptions are:—

1. If by the Immediate Judicatory, procedure with a Quasi-Jury be expressly or virtually refused.

2. If, on the original inquiry, *Quasi-misdecision* has had place, as per Section 3.

In both these cases, Appeal may be received.

SECTION VI.

Optional Functions as to Decrees.

Enactive.

ART. 1. Functions, of the exercise of which, in the delivery of his definitive decrees, an Appellate Judge has the option, are these which follow:—

1. The *Confirmative:* by the exercise of which, the decrees of the Immediate Judicatory are confirmed, and order for execution thereof sent down to that same Judicatory.

2. The *Reversive:* by the exercise of which, an order is given prescribing an arrangement, the direct reverse of that which was decreed by the imperative decree of the Immediate Judicatory.

3. The *Modificative:* by the exercise of which, the arrangement decreed as above by the Immediate Judicatory, is confirmed as to part, reversed, or changed as to other part.

4. The *Substitutive:* by the exercise of which, an arrangement is prescribed different from that prescribed by the Immediate Judicatory, the substance of the order bearing no reference to the decrees of the Immediate Judicatory.

Enactive.

ART. 2. For the several diversifications which the exercise of these several functions may require, according to the nature of the suit in question, see Procedure Code.

Enactive.

ART. 3. Of functions exercised by the issuing of *incidental orders*, such as those, the need of which may be called forth by *Quasi-Appeals*, examples are as follows:—

1. The *mandative:* when the alleged cause of complaint is non-commencement or non-continuance.

2. The *inhibitive:* when it consists in doing something which ought not to be done at all.

3. The *sistitive:* when it consists in doing something which perhaps may require to be done, but ought not to be done so soon.

SECTION VII.

Vexation by Appeal obviated.

Enactive.

ART. 1. Exceptions excepted, in case of an insincere or rash appeal, that the blame may more effectually fall upon the Appellant, the Judge appealed from may, at the instance of any party, take order for the attendance of the Appellant at the Appellate Judicatory, on the hearing, who thereupon may be, in case of need, subjected to fresh *viva voce* interrogatories: in case of non-compliance, the appeal may be dismissed.

For cases of exception see *Procedure Code*, Ch. xxviii. APPEAL AND QUASI-APPEAL.

Enactive. Instructional.

ART. 2. If the pecuniary and other faculties of a proposed Respondent, be not adequate to the support of his cause at the Appellate Judicatory, and no adequate assistance, gratuitous or professional, will, it appears, be there obtainable, the Immediate Judge appealed from may, of his own motion, or on the application of the Respondent himself, or of the Eleemosynary Advocate, or even of the Government Advocate of his Judicatory, transmit, along with the record, a certificate to the above effect, addressed to the Eleemosynary Advocate at the Appellate Judicatory; whereupon the Eleemosynary Advocate will, in virtue of his office, make argumentation on the Respondent's side.

SECTION VIII.

Seats, where.

Instructional. Ratiocinat

ART. 1. Of the several Appell

iories shall the Justice Chambers be stationed tn the several *districts*, or all of them, in that one only which is the seat of Government, or what other shall be the plan employed in regard to their location?

I. Reasons for the *distribution*, in preference to the *agglomeration* plan, are these:—

1. Between the Immediate and the Appellate Judicatories the communication will, on the *distribution* plan, be, upon the whole, much more *speedy* than in the *agglomeration* plan. Of the advantage, the quantum will be *directly* as the extent of the territory of the State, and *inversely*, as the facility afforded by roads, and other instruments of communication.

2. In concurrence with the Sublegislative Assemblies, the Appellate Judicatories will compose a powerful instrument of universal information; they will contribute to the formation of so many enlightened and watchful sections of the *Public-Opinion Tribunal*; instead of contributing, as the *agglomeration* plan would, to condense all such light into one spot, thus leaving the rest of the territory in a state of comparative darkness.

3. On the *distribution* plan, the migration system, which forms a part of it, presents a powerful preservative against the contagion of corruptive local attachments. On the *agglomeration* plan, true it is that the efficiency of these same causes of evil would, in appearance, be diminished. But in reality, it would more likely be increased. Applied to functionaries in these situations, the corruption would be the more efficient the more influential the corruptor: and in the metropolis would naturally be collected the most powerful and most influential families.

4. By the *agglomeration* plan, all the functionaries would naturally be brought into the closest and most familiar contact with the Justice Minister:—the subordinates with their common superordinates. With this familiarity, the strictness of inspection necessary to justice would scarcely be compatible. They would indeed be more immediately under the eye of their official inspector, but, unless in so far as accidentally kept awake by casual antipathies, that eye would be in a naturally *connicent* state.

To inflict punishment on a man at whose table you have been sitting, or he at yours, is not, especially in any such elevated sphere, a thing endurable.

Instructional. Ratiocinative.

Art. 2. II. Reasons for *agglomeration*, in preference to *distribution*.

1. These judicatories would, every one of them, be under the eye of the most intellectual and populous section of the Public-Opinion Tribunal.

2. The advantage from the diffusion of instruction in matters of judicature would indeed be in this proportion narrowed. But what must not pass unnoticed is, that in an Appellate Judicatory, the mass of instruction is narrow in comparison of what it is in an Immediate Judicatory: it is confined to what may be afforded by the matter of the *record*; together with the *argumentation* which has for its subject matter that same matter: it includes not the oral examination of witnesses, nor the arrangements for securing execution and effect to decrees, and thence for securing the efficiency of the means employed for the necessary communications.

3. By the *agglomeration* plan alone can the aggregate *expense* of all these judicatories be minimized. On the *distribution* plan, while some of them will be saturated with business, others there will probably be, whose whole working-time will not be filled up. Out of every two whose time were not above half occupied, the expense of one might be saved: so, out of every three, whose time was not above a third part occupied.

Of the sum of these reasons, the comparative force may be varied more or less by the local circumstances of different States.

Instructional.

Art. 3. Supposing the *distribution* plan preferred, thereupon comes the consideration—what shall be the relation between the results of the division made for the purpose of subordinate *legislation*, and those of the division made for the purpose of superordinate *judicature*? Were *symmetry* and consequent *facility of conception* the only objects of regard, exact coincidence would, without hesitation, be the answer: the best public obtainable is desirable for the one purpose, and so is it for the other. But, from this maximum of simplicity, departures in indefinite numbers may come to be prescribed, by considerations of a local nature and of weightier import. Not improbably one homage to simplicity may however be found capable of being paid, without any very considerable sacrifice. Supposing, in one or more instances, divers Sublegislative portions of territory comprised in an aggregate of Immediate Judicatory territories, which have been put together for the purpose of composing the territory of an Appellate Judicatory; or conversely, divers Appellate Judicatory territories put together to form one Sublegislative territory: still, in either of these cases may the coincidence be thus far preserved, that no Sublegislative territory shall be cut into two or more pieces by the boundary lines of one or more Appellate Judicatory territories, nor any Appellate Judicatory territory, by those of one or more Sublegislative territories: the elementary parts of the one will, throughout, be in either case so many integers of the other, without any admixture of fragments.

For other matters, see Ch. xii.

CHAPTER XXIII.

Professional Lawyers.

Section I.

Professional lawyers, who.

Expositive.

Art. 1. By a Professional Lawyer, or say *Law Practitioner*, understand a person who, for remuneration, serves as Agent, or say Helper, or Helpmate, to any other person, on the occasion of his being engaged, or in contemplation of being engaged, in a course of litiscontestation, or in the framing of written evidentiary instruments, composed of the matter of preappointed evidence, and as such framed with a view to eventual litiscontestation: or, on the occasion of application made to a judicatory for any purpose. For the several occasions on which, and purposes for which, application may be made to a judicatory, see *Procedure Code*, Ch. viii.

Expositive.

Art. 2. Litiscontestation is a term employed to signify indiscriminately the course of operation gone through on the occasion of a suit at law, by him whose station is on the demandant's side, and that gone through by him who is on the defendant's side.

Expositive.

Art. 3. Coincident in signification, wholly or partially, with *demandant*, are, in English-bred Law, *claimant*, *plaintiff*, *complainant*, *orator*, *pursuer*, *prosecutor*, and perhaps others: one employed in one judicatory, another in another.

Expositive. Instructional.

Art. 4. Upon clearness, as well as completeness, in anything like an adequate degree, an absolute *veto* is on this occasion put by the nature of the case, improved by sinister industry: what is here seen is, the nearest approach that can be afforded.

Expositive.

Art. 5. Coincident in like manner with Defendant, is Defender: perhaps also some others.

Expositive.

Art. 6. Coincident in signification with *litiscontestation*, in some sort, that is to say partially, is *litigation*; and this last is the term most commonly employed. But to the import of the word *litigation* has become attached, in the mind of him who employs it, a sentiment of disapprobation, in relation to the act or practice designated by it; *litiscontestation* being the *neutral*, *litigation* the *disapprobative*, or as it has been styled *dyslogistic*, or *cacologistic* appellative, applied to the same course of action.

Expositive. Instructional.

Art. 7. Out of the association has grown a most pernicious vulgar error or fallacy: error, on the part of those who are *not* aware of the misrepresentation thus made: fallacy on the part of those who *are*. He, whose endeavour it is to obtain redress for errors, and he whose endeavour it is to do wrong by force of law, are confounded by it, and represented as being persons of the same character. He whose endeavour it is to save himself from an unjust demand, and he whose endeavour it is to save himself from a just demand, are involved in the same opprobrium; and thus it is, that under the notion, or on the pretence of repressing litigation, the rich and powerful combine with one another in consummating the oppression of the poor and helpless.

Expositive.

Art. 8. In this class of practitioners, the nature of the case admits of four principal subclasses; or what comes to the same thing, the same person may, as occasion calls, act in any one or more of so many distinguishable capacities: exercising, in the service of individuals, individually considered, or considered as united in bodies, so many distinguishable functions. These subclasses are, or may be, thus denominated.

1. *Attorneys-at-law*—or say, Law Managers. In this character, the professional helpmate of the party conducts the proceedings in the suit on his side. In its original signification, this appellation is not coextensive with the term *manager:* for it supposes the party not to be attendant in the Justice Chamber, in the presence of the Judge: in a word, it is synonymous to *substitute* or *proxy:* suppose the party present, the Lawyer who acts as his helpmate, (acting in this case, as well as the other as *manager*,) is not his substitute, or say proxy, but may with propriety be termed his *assistant*.

2. *Advocates*, or say *Law Administrators*, *Pleaders*, or *Argumentators*. This term, though employable in both cases, brings to view more readily the case where the pleading is performed by word of mouth, than the case where it is performed by writing.

3. *Counsellors*, or say *Law Advisers;* to wit, in relation to the commencement, the continuance, and the termination of a suit.

4. *Notaries*—so styled under Rome-bred Law: under English-bred *conveyancers*. In this character, the Lawyer frames or assists in framing, evidentiary instruments, as per Art. 1; and in particular instruments of contract and other instruments of law conveyance, by which rights and obligations are created, and conveyed between one person, natural or fictitious, and another.

Section II.

Litiscontestational Class, one only.

Enactive.

Art. 1. Into whatsoever elementary functions the aggregate of the functions of a professional lawyer has, as per Section 1, been elsewhere considered as distinguished, under this code, whosoever is entitled to exercise any one of these functions, is entitled to exercise every other. For the manner in which a person's title to exercise them is constituted, see Section 4, *Locable who.*

Enactive. Expositive.

Art. 2. In this as in other professions and occupations, persons may act in partnership; on the occasion, or in contemplation of any suit, professional lawyers may, in any number, act as partners. But for no communication as between one and another, are they, in their dealings with their clients, or with adverse parties, entitled to make any separate charge. One partner, for example, cannot, by calling himself *Attorney* or *Managing Lawyer*, entitle himself or a partner of his, to make a charge on their common client, or in case of costs defrayed by an adversary, on the adversary, for putting a state of the case to another partner, for his instruction in pleading before the Judge; nor to the same or a third partner, for giving his advice as to the commencement, continuance, or termination of the suit, or for the purpose of his framing an instrument of *procedure*, on the occasion of the suit, or an instrument of *conveyance* at large, or an instrument of *contract.*

Ratiocinative. Instructional.

Art. 3. Exclusion, why put upon the division of the profession, into the customary classes, two or more: namely, the attorney and the advocate, with or without ulterior division made of each?

Answer. Reasons. 1. The greater the number of these divisions, the more completely is all responsibility, and feeling of responsibility, done away.

2. The more effectually is the system of falsehood—licensed falsehood—and by the license rendered effective, as well as unpunishable falsehood, in its several shapes of insincerity and rash assertion, established.

3. The greater the number of these mercenaries, the greater the number of assistants who, in one and the same suit, must be paid.

4. Not only in proportion to their number must the pay be increased, but in a higher proportion. For among these mercenaries, distinctions in respect of rank, naturally and necessarily have place; and the higher the rank, the more expensive the remuneration: remuneration of the highest rank for the same quantity of time and labour, or even for much less, being several times the amount of remuneration for the lowest, not to speak of the intermediate ones.

5. The more numerous, the higher paid, and thence the more opulent, the body of these mercenaries taken in the aggregate, the stronger is the resistance which, while they cannot but be disposed and prepared, they cannot but be able to oppose to every alleviation of the *evil* by which they profit, and out of which, that which to them is *good*, is extracted.

Instructional.

Art. 4. For rendering it the more clear, how the mendacity license is established and acted upon, a few words of explanation may have their use.

Suppose no such assistants to have place, the party standing alone, speaking with the instrument of punishment hanging over his head, with the thread capable of being every instant cut, upon the appearance of the offence, the danger of mendacity, and consequently the evil flowing from it, is at its minimum. Remove now from off the stage the party himself, and bring on in his place the mercenary assistant, and constitute him his substitute. The party, let him have uttered ever so many falsehoods, cannot be punished for any one of them: for it is not to the Judge, it is only to the party's own assistant, hired by him, and dependant on him, that the falsehoods are uttered: what they are, and how many they are, are matters utterly unknown to the Judge. In the person of the party they are therefore all of them unpunishable.

To all these several falsehoods, if there be no punishment to restrain him, the hired substitute will of course give utterance: *i. e.* to all such as, in his eyes, are of a nature to give support to his client's cause, which, by the hire, has been rendered *his* cause. As the principal with whom they originated cannot be punished for them, so neither can the substitute, by whom they have been adopted, uttered, and put to use: for, as to the fact of their having been stated to him by his client,—in the assertion of this fact by the supposition, there is nothing but what is true. False as they may have been, it was not for him to presume their falsity: it was not for him to cast this stain upon the character of this his customer, this his benefactor: if, considering the nature of them, the credence given by him to them was too easy, here was nothing more than an error in judgment: and an error in judgment is not among those things for which punishment can reasonably and usefully be inflicted.

Enactive. Instructional.

Art. 5. To evil in this shape, the established systems afford not any of them, any tolerably efficient remedy.

But to this same evil, the here proposed system affords a remedy, nor that an inefficient one.

In the first place, if to the Judge, acting

under the check imposed upon him by the circle of Judiciary Inspectors, it is, from the nature of the case, sufficiently manifest that, in the intercourse between client and lawyer, falsehoods were uttered by the client, to the end that, through the lawyer they should find their way to, and make their impression on, the faculties of the Judge; and that of these statements, the falsity could not but be recognised by the experience and discernment of the man of Law, here, on the part of this said man of Law, is *insincerity:* and, for falsehood in this shape, the substitute may, with as much facility and justice, be made to suffer, as the principal, for the *mendacity.* And so in case of rash credence, supposing the consciousness of the falsity not sufficiently certain, and the misrepresentation to have had no other cause than an error in judgment; though that error, so clearly the result of a culpable want of attention, as to be, in consideration of the injury to the parties on both sides, not unjustly punishable.

Upon occasion, justice to a degree still more extensive and more effectual may be done. Interrogatories having been put to the professional substitute, and his answers set down, the principal his client, might afterwards be convened before the same Judicatory, and be in like manner examined: examined, in the first place separately, and afterwards in confrontation with the man of Law: effectual arrangements being, in the meantime, taken, to prevent them from giving themselves the benefit of any falsehood-assisting intercourse.

SECTION III.

Fields of Service.

Enactive. Instructional.

ART. 1. Coextensive with the logical fields of service of the Judges taken in the aggregate, is that of every Professional Lawyer: of the whole field of law actual and possible, no part is there on which professional, and thence, remunerated help, to a party, may not be indispensably necessary to the attainment of the ends of justice.

Enactive.

ART. 2. Coextensive, likewise, with that of the Judges, taken in the aggregate, is his local field of service. He who has been admitted in any one Judicatory, may serve in any other.

Instructional.

ART. 3. As between Immediate and Apellate Judicatories, essentially necessary to aptitude of service in an Appellate, will previous service in an Immediate Judicatory be. But, so manifest will be this necessity, that while any professional law helper, who has served in an Immediate Judicatory, is to be had in an Appellate Judicatory, none who have not previously served in an Immediate Judicatory will, naturally speaking, be employed.

Not unfrequently, to wit, when in the eyes of a client, able to bear what additional expense may be necessary, the importance of the suit warrants that same additional expense, he who is helper to the party in the Immediate, will, in case of appeal, migrate with the suit to the Appellate Judicatory.

Instructional.

ART. 4. Where two or more Law Practitioners act in partnership, one partner may, on the occasion of a particular suit, make this migration, without interruption, and thence without detriment, to the general course of the partnership business.

Instructional. Exemplificational.

ART. 5. Under English-bred Law, under which both logical and local fields of judicial service are broken down into such an indefinite multitude of fragments, the confusion has produced a correspondent, though not an equal, degree of diversification and complication in those of the Professional Lawyer. An attorney in this or that judicatory cannot make his appearance in this or that other: and so as between Barrister and Barrister.

SECTION IV.

Locable who.

Enactive.

ART. 1. When the period of preparation (as to which, as applied to the case of Judges, see Ch. xii. JUDICIARY COLLECTIVELY, Section 28, *Locable who*) has elapsed, no person is admissible to serve as Professional Lawyer whose name does not stand upon an appropriate list, —say the *Professional Lawyers' List.*

Enactive.

ART. 2. No person is thus locable in the Professional Lawyers' List who has not served out his service time, in the character of *Probationary Professional Lawyer,* after his name has been entered upon the *Probationary Professional Lawyers' List.*

Enactive.

ART. 3. After the expiration of the abovementioned appropriate preparation period, as per Art. 1, no person is locable in the Probationary Professional Lawyers' List till he has been located in the Administration Locable List, as per Ch. ix. MINISTERS COLLECTIVELY, Section 16, *Locable who:* he is then locable by a *Location instrument,* signed by the Government Advocate principal, or the Eleemosynary Advocate principal, of any Immediate Judicatory.

Enactive.

ART. 4. Until the preparation period has elapsed, any person is thus locable on the Probationary Professional Lawyers' List, by the Government Advocate principal, or the Eleemosynary Advocate principal, as per Art. 3.

Enactive.

Art. 5. In the case of a Probationary Professional Lawyer, the service time is composed of [four] service years. For the meaning of a *service year* as contradistinguished from a *solar year*, see Ch. xii. Judiciary collectively, Section 28, *Locable who.*

Enactive.

Art. 6. Of the four service years, the two first are served in the Judicial Inspectors' Gallery, as per Ch. xvii.

Enactive. Instructional.

Art. 7. Of the two others, any portion may be served—either in the Inspectors' Gallery, as above, or by serving gratuitously in the character of *Eleemosynary* Lawyer, in the service of *helpless litigants:* as to these, see Ch. xii. Judiciary collectively, Section 13, *Justice for the Helpless*, and Ch. xx. Eleemosynary Advocates.

Enactive. Instructional.

Art. 8. Whatsoever time has been served by such *Eleemosynary* Lawyer in the Judicatory, will have been entered of course on the Record: whatsoever has been so served by him elsewhere than in the Judicatory, will be ascertained by examination. To the Judge it will belong to have care, lest, in any instance, a portion of time, stated as having been so employed, has not been so employed, or has been needlessly so employed, for the purpose of its striking off so much service time in the Inspectors' Gallery.

Enactive. Instructional.

Art. 9. After the expiration of the preparation period, as above,—the age at which a person will be locable on the Probationary Professional Lawyers' List, will be [nineteen] years. This will give for the age at which he may commence service as Eleemosynary Lawyer, say twenty-one years; and for the age at which he is locable on the Professional Lawyers' List, twenty-three years: the same number of years as that which, as per Ch. xii. Section 28, is necessary to render a person locable in the situation of Immediate Judge principal. This will leave for his taking the benefit of the General Official Instruction system, as per Ch. ix. Ministers collectively, Section 16, *Locable who*, a period, having for its commencement an age dependent on the particular circumstances of each individual, and ending at the above-mentioned age of nineteen years.

Section V.

Capacity as to Offices.

Expositive.

Art. 1. A Probationary Professional Lawyer, if he has not commenced acting in quality of Eleemosynary Lawyer, as per Section 4, his service being as yet confined to that of Judiciary Inspector, is not thereby disqualified for any office.

Enactive.

Art. 2. But, if he has commenced acting in that quality, certain offices and situations there are from which he is thereby disqualified. These are those of—

1. Judge, Principal, or Depute permanent.
2. Registrar, Principal, or Depute permanent.

Expositive.

Art. 3. For certain Judiciary offices and situations he remains not disqualified. These are those of—

1. Government Advocate, Principal, or Depute permanent.
2. Eleemosynary Advocate, Principal, or Depute permanent.

Enactive. Expositive.

Art. 4. If it be with consent of all parties, he is not disqualified from serving as Depute occasional in any one of those above-mentioned offices. Till located in the Professional Lawyers' list, his hired and unavoidable course of partiality has not as yet commenced.

Ratiocinative. Instructional.

Art. 5. Why exclude Professional Lawyers from the capacity of being located, or officiating as Judges?

Answer. Because, in quality of his profession, a law practitioner, in the pay of a litigant party, acts under the impulse of an interest incurably adverse to the several ends of justice. The whole train of his thoughts and occupation engages him in the perpetual endeavour to promote injustice. By injustice in that shape in which it stands opposed to the collateral ends of justice, his personal and sinister interest may be served in the most immediate way, and in this case, at the expense of his client, as well as that of the adverse party. By injustice in the shape in which it stands opposed to the direct ends of justice, his personal and sinister interest is served by him in a less immoderate, though not less extensively effectual way: and in this case, in conjunction with the personal and sinister interest of his client.

Instructional.

Art. 6. In the case of a Judge, this may be in a no less degree true; but, in the case of the Judge, the correspondent propensity is susceptible of checks, such as, when united, afford a promise of being effectual: not so, in the case of the assistant of a party litigant, engaged in his service by hire.

In the case of the Judge, disrepute is attached to the exercise of partiality, adverse to the ends of justice: not so, in the case of the hired law practitioner.

In the case of the Judge, acting under the eye of the Public-Opinion Tribunal, unjust partiality can scarcely have place and act with effect, without being manifest, and in such sort manifest, as to be perceptible to several authorities, in the power of any one of which it is to remove him out of his situation: whereas, in the case of the hired law practitioner, whose intercourse with his client is carried on in secret, unjust partiality, having for its effect and object the assisting him, howsoever widely in the wrong, to gain the suit, as if he were in the right, may have place, and to an unlimited extent, without being to any other eyes perceptible.

Instructional. Ratiocinative.

ART. 7. Only in so far as in the exercise of this profession, it is the effect of disrepute to diminish the quantity of his professional gains, can disrepute be regarded as affording to this propensity any effectual check. But it is not in the nature of the case, that by any disrepute which can in this case attach itself, any such diminution should be effected. To insincere litigants, the greater the effect with which the propensity appears to operate to the advantage of his clients, the stronger is the inducement it presents to them for engaging him in their service. As to the sincere litigant, dishonest means, it is true, he has not, as such, in his own eyes, any need of, nor, therefore, any adequate motive for employing in preference a law practitioner whose disposition affords an assurance of his readiness to employ such means. But that same propensity which affords an assurance of his readiness to employ even dishonest means, affords an assurance of corresponding energy and activity in the employing of honest and unexceptionable ones: and few indeed are the litigants, howsoever sincere, who seeing, as they think, the party who, being adverse to them, is in the wrong, about to gain the suit by dishonest means, would not, rather than see the wrong to prevail, and feel it prevail, at their own expense, be content, under a reasonable prospect of success, to see him employing similar dishonest ones in their favour.

Instructional. Ratiocinative.

ART. 8. For the situation of Judge, under this Code, preparation is made of a class of men whose interests, when the checks to injustice that apply to them are taken into account, will be seen to be in a state uniformly conducive to the ends of justice. From injustice, opposite to the direct ends of justice, they can have no tolerable chance, nor therefore, any natural hope to gain profit in any shape; while, at the same time, they have everything to suffer and to apprehend from it: and so, as to injustice, opposite to the collateral ends of justice. They are men who must have served an apprenticeship, and that an active one, in the school of justice—the Justice Chamber. Such being to be had, palpably absurd would it be to take any whose interests have been in continual opposition to these same ends, trained in the two schools of injustice, the Attorney's office and the Advocate's chamber.

Instructional. Ratiocinative.

ART. 9. True it is, that besides being employed in the endeavour to give success to the enterprises of a wrong-doer, or saving him from condign punishment, he is also employed in the endeavour to obtain, for the injured, compensation, and for the public, the benefit of the example afforded by punishment, at the charge of the wrong-doer: accordingly, of the two parts which the law practitioner is with equal constancy employed in acting, this is the only one which, on the occasion of the laud which is continually poured forth on the profession, is ever brought to view. But whether it be in this way that he is employed or the other, is in every instance matter of chance, and to him it might seem, would therefore naturally be, matter of indifference. But on a nearer view, it will be seen that it is on the side of the wrong-doer that the bias of his affections will be sure to lean: for the clearer a man's right is, the less is the need he has of such support: and the more atrocious a man's criminality is, the greater is his need of it, and the higher is the reward which may naturally be looked for in return for it.

Instructional. Ratiocinative.

ART. 10. To the indiscriminateness of the hire and the support, and not to the occupation, does the necessity of the habitual insincerity stand attached. It applies not to him in whose instance the service is gratuitous. For in this case it is not so natural as to be generally presumeable, that a man will render his assistance to one who in his eyes is culpable, unless it be in the case of a particular friend, to ward off excess in the suffering to which he stands exposed: and no sooner does the conduct of his *protegé* present itself to his eyes as being to a notorious degree blameable, than public opinion will approve rather than condemn him in the event of his withdrawing it.

By his affection for his friend, suppose him even led astray from the path of sincerity and probity, the deviation is but the work of a moment: whereas, in the case of the law practitioner, without any deduction worth bringing to account, it occupies one half of his life.

By absurdity and improbity, coupled with the grossest inconsistency, exclusion under a variety of pretences has been put upon evidence, in consideration of the impurity of the source. No case is there in which it can be reconcileable to reason; but if there *were* a case, it would be that of the law practitioner, and more particularly when raised into power and impunity by the office of Judge. Under the denomination of a *felon*, a man who has

been guilty of a single act of robbery or theft, is thus deemed incapable of ever speaking truth. But without uttering so much as a single falsehood, a man may have passed his whole life familiarized in the practice of robbery: whereas, without having passed it, in the continual practice of wilful falsehood, never in England could a man have been raised to the dignity of Judge. Not on the man who is hanged, but on the man by whom he is hanged, would the exclusion be put, if reason, not prejudice, were the guide.

Instructional. Ratiocinative.

Art. 11. For bringing the particular interest of the Judge as near as possible to coincidence with the universal interest, every expedient that could be found has been employed, and it is hoped not without success. But to bring the interest of the law practitioner into a direction other than diametrically opposite to the universal interest, is what the unalterable nature of the case has rendered absolutely impossible.

It is the interest of the law practitioner to raise and foment to the utmost, disputes and quarrels among relatives and neighbours. Among the duties of the Judge will be the putting litigants upon their guard against this sinister interest, and as often as he finds it at work to hold it up to public view. But, the Judge who was himself a law practitioner, and whose circle of intimates is composed of law practitioners,—what reasonable expectation can there be, that he will thus join with strangers against his familiar friends! that the wolf will thus join with the sheep against the wolves! Look at the English bar and benches. Special and casual cause of quarrel excepted, what confederates were ever more indefatigable than are those lawyers of the two classes—Judges and Barristers—in singing the praises of each other!

Instructional. Ratiocinative.

Art. 12. To the relation between the qualities possessed by the able Advocate, and the qualities desirable on the part of a Judge—sufficiently close for instruction is the relation between those possessed by a Procuress, or the keeper of a house of ill fame, and those desirable, on the part of a governess or mistress of a boarding-school for young ladies.

The Procuress being conversant in the arts employed in the destruction of female chastity, will be possessed of the experience capable of being applied to the preservation of it. By this same experience is any special security afforded for its being exclusively *so* applied! No: on the contrary, the result probabilized by it is rather the sale of the article in question to the best bidder, than the preservation of it.

The Advocate being conversant in the arts employed in the misrepresentation of law and fact—of everything, a correct conception of which is necessary to the exercise of justice, will be possessed of the experience capable of being applied to that uniformly desirable purpose. But in this same experience is any special security afforded for its being exclusively *so* applied! No: on the contrary, the result probabilized is—that it will be for the advancement of any purpose indicated by this or that particular and sinister interest of his own, in preference to the fulfilment of the ends of justice, where competition has place, that the extraordinary mental power in question will be applied.

Instructional. Exemplificational.

Art. 13. In some parts of Italy there used to be a sort of man whose profession it was, in consideration of a fee, to lend his assistance to any man, whose desire it was, no matter for what cause, to ease any other man of the burthen of life: a *Bravo* was the appellation by which this species of professional assistant was denominated.

By what points was the brave gentleman distinguished from the learned gentleman? Answer. By these—

In a direct way, the *life* only of the adversary is the subject matter of the service rendered by the brave gentleman to his client: *property* only in this or that particular case; for example, where the client happens to be next in succession to the victim indicated. To the subject matter of the learned gentleman's professional service, no such, nor any other limit, applies.

The learned gentleman is not sure of hitting his mark. But this is no fault of his: to the hitting it, no endeavours on his part are ever wanting. Read those high-treason trials, by which a learned gentleman, in reward for his services on that occasion, became not only a learned lord, but, moreover, the head of the law. See whether, on his part, any endeavours to cause the men in question to see their bowels torn out in due form of law, were wanting. Read the trials of Hardy and Horne Tooke.

The instrument of service employed by the brave gentleman is the *hand*. The instrument employed by the learned gentleman is the *tongue*.

The brave gentleman, if he can be laid hold of, is, for the service rendered by him, deprived of life by the conjunct services of a learned gentleman in his capacity of Advocate, and another learned gentleman in his capacity of Judge. Neither loss of life nor suffering in any other shape, is the learned gentleman exposed to experience in either of these his capacities.

For the sort of service rendered by the brave gentleman, a certain degree of disrepute never failed to attach upon the character of the brave gentleman, notwithstanding that one of the four cardinal virtues, namely fortitude, which his profession necessitated, and by which he was so pre-eminently distinguished. Instead of disrepute, transcendant honour is the reward which the learned gentleman receives, not only at the hands of the political, but at the hands

of the popular, or say moral, sanction: not only at the hands of the ruling portion, but by the suffrages of the Public-Opinion Tribunal: and so will he continue to do until the bandage is taken off the eyes of that Judicatory, and the difference between right and wrong is become perceptible to it.

Instructional. Exemplificational.

ART. 14. Neither to the brave gentleman, nor to the learned gentleman, is his honour, his good reputation, by any means without its value. Of the brave gentleman, the reputation consists in the fulfilment of his duty as to two descriptions of persons: to wit, 1, his clients: 2, his professional brethren, with whom on each occasion he is in alliance, in league, in confederacy.

Towards his client, his duty on each individual occasion consists in killing the troublesome person whom he stands engaged to kill: it would be violated, if, instead of that same troublesome person, he were to kill his employer.

Towards his client, the learned gentleman's duty consists on each occasion in subjecting to capital or other punishment the troublesome person on whom he stands engaged so to inflict suffering: it would be violated, if, instead of that same troublesome person, he were so to deal with his client: or if, by design or negligence, he were to suffer the troublesome person to escape.

So, his duty consists in the endeavour to save his client from merited punishment, whether in the shape of mortal or less afflictive suffering: that same duty would be violated if he neglected to use any means in his power to produce that same salutary effect: if he omitted, for example, to give utterance or support to any false assertion tending to the production of that same effect, how completely soever conscious of its possessing that same quality.

Instructional. Exemplificational.

ART. 15. In England, on the part of the Judges, of all classes of men that are anywhere to be found, disregard to truth, love of injustice, and hatred of justice, have place and are in force and operation, to a degree (as will have been seen) altogether incapable of being equalled in any other country, civilized or uncivilized: of mendacity, nowhere has any such use been made: from mendacity, nowhere has any such profit been derived.

Out of whom are these English Judges chosen? Out of those professional lawyers who have been for the longest time habituated to the practice of profit-seeking and profit-reaping mendacity.

Instructional. Exemplificational.

ART. 16. Of the two irreconcileable enemies to justice and happiness, force and fraud—force is the first that falls into disrepute: so, at length, though after a long interval, will fraud.

Your occupation, sir,—what is it?—a pirate's, or what other? was, according to Homer, among the questions put to a stranger by Menelaus. In his observations on the English statutes—curious enough, says Judge Barrington, must have been that state of society in which a question to this effect could be put without design or apprehension of giving offence. Worded a little more in detail, the question might have stood thus: You are a plunderer, and for carrying on your business, a strong and lawless arm is the instrument habitually employed by you. Force was then and there the chief arbiter of human destiny.

Instructional.

ART. 17. From the time anterior to Homer, and the territory of ancient Greece, transfer the scene to England, or English-bred America.

You are of the Bar, sir, if I do not mistake? is a question which now-a-days in England or the United States, a gentleman may, with as little fear of giving offence, put to any other gentleman whom he meets. You are of the Bar—that is to say, the indiscriminate defence of right and wrong, and that for hire, is your occupation: and for the purpose of that occupation, falsehood—self-conscious falsehood, is an instrument which, without stint and without scruple, you are in the continual habit of employing.

Thus it is in the existing order of things: and thus of necessity, in every order of things, it must at all times continue to be.

But that which is not of necessity is, that for filling the situation of Judge, the individuals selected should, in every instance, be taken from this class,—nor so much as in any single instance.

SECTION VI.

Remuneration.

Instructional. Ratiocinative.

ART. 1. *Minimize expense.* As, to all other parts of the expense of recourse to the power of justice, so as to this, such is the general rule. The less the remuneration given to persons of this class, so much the better for persons of all other classes. For, unless the services rendered by the functionary in question, in his capacity of Notary, constitute an exception, by whatsoever is given to a functionary of this class, is expense added to expense, vexation to vexation.

Instructional. Ratiocinative.

ART. 2. By fixation of prices—that is to say, by appointment of a fixed sum for each article of service—by this expedient, if it stood alone, in no other than a very inadequate manner could this desirable effect be produced. Written pleadings, paid at so much for so many words, being altogether incompatible with the only system of procedure

compatible with this Code,—and of written instruments of procedure, all such as are in their nature susceptible of general application being provided for by printed papers, with blanks for the individual parts of the matter,—little would remain for the subject matter of charge besides the time employed on each occasion in the business: and how difficult it must be, not to say impossible, to pre-ascertain, for the purpose of fixing the remuneration, what shall be the quantity of time necessary to be expended in the performance of each particular business, for which there shall be a demand in each individual suit, is sufficiently manifest.

Instructional.

Art. 3. Under the here proposed system, several circumstances, however, contribute their aid towards the reduction of this part of the expense, independently of everything that can be done, by regulation applied in a direct manner by fixation of prices, as above. Examples are—

1. Exclusion of all written pleadings, as above.

2. Maximizing the generalization of all written instruments, as above.

3. Exclusion of the distinction between managing lawyers and speaking lawyers, as per Section 2, *Litiscontestational Class, one only.*

4. Exclusion for the most part of argumentation on the question of law, by the substitution of real law throughout, to imaginary law, and thence of all extra payment for pretending to delineate the features of a nonentity.

5. Rendering the substitution of the helpmate to the principal,—of the lawyer to the client,—a case of exception only: the generally exemplified case being the attendance of all parties on both sides in the Judicatory, in the presence of each other, as well as of the Judge: by which means, except in so far as highly penal cases form an exception, the demands on each side, and the evidence on which they are respectively grounded, will all commonly be brought to view at once.

Instructional. Ratiocinative.

Art. 4. The causes, by which the excess in the price paid to lawyers for their services, and thence the excessive amount of the burthen imposed on their litigant clients, is produced, will thus in a great part be removed; while, by a variety of arrangements directed to this end of such part of the burthen as cannot be taken off from the parties on both sides, the quantity imposed on those who are in the wrong will be maximized; and by that means operate with proportionable effect towards the reduction of the quantity of the like wrongs in future.

Expositive. Instructional.

Art. 5. On reviewing the demand made by the lawyer for his service, the Judge will take into consideration—not merely the quantity of time actually employed, and of business actually done, but also what there was need for employing and doing: and this, whether length of time be regarded, or number of operations (journeys included) performed, or number and length of written instruments penned.

Instructional.

Art. 6. In an estimate formed of the quantum of remuneration, adequate on the occasion in question to the service performed by a professional lawyer, the quantity of time thereon expended cannot pass unheeded. But so far as regards time employed elsewhere than in the Judicatory, unless checked by the vigilance of the Judge, not only may time not employed in the service of the client be charged as so employed, but, for the sake of the remuneration, needless addition may be made to the quantity actually so employed.

Section VII.

Securities for appropriate aptitude.

Enactive.

Art. 1. Compensationally and punitionally, as a litigant or extraneous witness is responsible for statements *mendaciously* or *temerariously false*—so is a Professional Lawyer, for statements *insincerely* or *temerariously* false; to wit, as to anything which he professes to believe, of statements made by any such witness, or by any person whose statements, made or supposed to be made, on any other occasion, are, on the occasion in question, employed in evidence.

Enactive.

Art. 2. By a decree of a Judge Immediate, pronounced after due examination, and subject to Appeal, a Professional Lawyer may be eliminated out of the List of Professional Lawyers acting in that Judicatory.

Enactive.

Art. 3. On appeal, if the eliminating decree be confirmed, the Judge Appellate may extend the disqualification, to any, or all other Judicatories in the State.

Expositive.

Art. 4. One instrument of security, which applies peculiarly to the Professional Lawyer, is his direct and constant subjection to the power of the Judge: a subjection, less reserved than in the case of the Government and Eleemosynary Advocates: they being raised above him, by their official character.

Enactive. Instructional.

Art. 5. The same publicity which enforces

the Lawyer's duty as towards his clients, enforces it also, as towards his client's adversaries. A wrong, to which a litigant on either side, stands exposed, at the hands of the Lawyer on the other side, is the giving undue increase to costs of suit. By want of appropriate intellectual aptitude a client may stand debarred from having cognizance of the excess: or, by want of firmness, from resisting the demand. Without waiting for any application on the part of the client, the Judge will therefore—if it be needful, and without preponderant evil in the shape of delay, vexation, and expense, practicable—of his own motion, accerse the client, and, by examining him, endeavour to ascertain, whether the time charged as expended in the service of the client in relation to the suit, was or was not so expended, and if expended, whether the expenditure was or was not needful, as per Section 6, Art. 6.

As in relation to time, so in relation to epistolary communications, other written instruments, and journeys.

Instructional.

ART. 6. On this occasion, the Legislature and the Judge will be aware of the manner in which the sinister interest of a client may be acting, not in opposition to, but in league with, the sinister interest of the lawyer. For, if in his own view of the matter, the client is confident of gaining the suit, and *that* in such sort, as to be assured of receiving back from his adversary the amount of his own expenditure, in the shape of costs,—a confederacy with the Lawyer may, in this case, render it the endeavour of the client,—not to minimize, but to maximize the amount of his own costs.

Instructional.

ART. 7. For the more effectual and timely prevention of all such excess, an object of the Judge's care will be, at the earliest stage of the suit, in concert with the parties and their lawyers, to ascertain what may be the cheapest as well as most expeditious course, for bringing it to a just conclusion. For various arrangements made for minimizing expenses, see *Procedure Code*, Ch. xx., REMEDIES COMPENSATION.

For other matters, see Ch. xviii. and Ch. xix., and also the *Procedure Code*, Ch. ix. PROXIES.

CHAPTER XXIV.

JUSTICE MINISTER.

SECTION I.

Fields of Service.

Enactive.

ART. 1. Co-extensive with the territory of the State, is the Justice Minister's *local* field of service.

Enactive.

ART. 2. As to his *logical* field of service, see Section 2, *Functions in general.*

SECTION II.

Functions in general.

Enactive.

ART. 1. As to the Judges, and the several other magisterial functionaries belonging to the Judiciary department, (as per Ch. xii., Section 3, *Judiciary functionaries,*) the Justice Minister exercises the *locative* function: from among what persons, see Ch. xii. Section 28, *Locable who.*

Enactive.

ART. 2. So, eventually, the *suspensive:* as per Ch. ix. MINISTERS COLLECTIVELY, Section 4, *Functions in all,* Art. 44.

Enactive.

ART. 3. So, eventually, the *dislocative:* as per Ch. ix., Section 4, Art. 44.

Enactive.

ART. 4. So, in certain cases, the *translative,* or say, transferential, as per Ch. ix., Section 4, Art. 44.

Enactive.

ART. 5. With relation to his own office, the Justice Minister exercises the *self-suppletive* function: that is to say, by the location of a *Depute,* as in the case of the *Prime Minister,* as per Ch. viii., Section 4, *Self-suppletive function.* Failing such location, the functions of the *Justice Minister* are exercised by the *Legislation Minister;* as to whom see Ch. xi. MINISTERS SEVERALLY, Section 2, *Legislation Minister.*

Enactive.

ART. 6. As to the several *things* belonging to the Judiciary department, he exercises in chief the several functions *procurative, custoditive, applicative, reparative, transformative,* and *eliminative;* as to which see Ch. ix. MINISTERS COLLECTIVELY, Section 4, *Functions in all,* Arts. from 45 to 53. The functions *procurative, reparative,* and *eliminative,* he exercises in concert with the *Finance* Minister.

Expositive. Exemplificational.

ART. 7. Of *things* belonging to this department, examples are the following:—

I. Things IMMOVEABLE—*Justice Chambers.* II. Things MOVEABLE—the *Stock* thereto belonging. III. Things IMMOVEABLE—*Prisons.* IV. Things MOVEABLE—the *Stock* thereto belonging. See Ch. xii. JUDICIARY COLLECTIVELY. Section 33, *Judiciary Apparatus;* Section 34, *Justice Chambers;* Section 35, *Judiciary Habiliments;* and also the Author's work, intituled PANOPTICON (in vol. iv. of this Collection.)

Enactive.

Art. 8. As to the several other offices belonging to the Judiciary department, he exercises the *Visitative* function, as per Section 3, *Visitative function.*

Enactive.

Art. 9. So, as to *Prisons*, employed in the army service, or navy service, or both. See Ch. x. Defensive Force, Section 13, *Military Judicatories:* and Section 17, *Ship-board Oppression obviated.*

Enactive.

Art. 10. As to the business of his own office, he exercises, in chief, the *Inspective*, *Statistic*, and *Recordative* functions: as to which, see Ch. ix. Ministers collectively, Section 4, *Functions in all*, Arts. from 54 to 57. So, likewise, in the several *Judicatories* he causes to be exercised those same functions: enforcing, upon occasion, so far as regards this his department, the application of the *Universal Registration* system, as per Ch. viii. Prime Minister, Section 10, *Registration System.*

Enactive.

Art. 11. In relation to the exercise given, by the several Judges, Immediate and Appellate, to the *Contested-interpretation-reporting*, *Eventually-emendative*, and *Preinterpretative* functions, as per Ch. xii. Judiciary collectively, Sections 19, 20, 22, he exercises a superintending control: as to which see those several Sections.

Enactive.

Art. 12. So, in relation to the several abovementioned subject matters, the *melioration-suggestive* function—the exercise of which, his paramount means of observation and information considered, is, in a more particular manner, expected at his hands.

Enactive.

Art. 13. So, likewise, in relation to the whole system of *Judicial Procedure*, and the practice of the several Judges, and other functionaries under it.

Enactive.

Art. 14. So, the *conservative* function, in relation to the state of the law considered in respect of *form:* that is to say in respect of the *words* by which the *matters* of it, or say the *ideas* meant to be conveyed by it, are designated and expressed; and the *method*, including the *grouping*, and the *order*, in which, in each group, those same words are arranged. As to the *mode* in which exercise is given by him to this same function,—it is by representation, made by him, to the Legislature, in case of any *deterioration*, which the introduction of a *new* law, howsoever apt in respect of *matter*, might, for want of symmetry with the existing mass, be productive of, in respect of *form.*

As to *form* considered with reference to *law*, see *Nomography* (vol. iii. p. 233.) This function he exercises in concert with the Legislation Minister, as to whom see Ch. xi. Ministers severally, Section 2, *Legislation Minister.*

Enactive.

Art. 15. For giving execution and effect to the exercise given by him to these his several effective functions, he exercises within the field of service confided to him, the several elementary functions belonging to the several Judicatories, Immediate and Appellate, as per Ch. xii. Judiciary collectively, Section 9.

Section III.

Visitative Function.

Enactive.

Art. 1. As often as occasion calls and time permits, so far as possible in person, as to the rest by Depute, permanent or occasional, the Justice Minister will perform in the Immediate Judicatories *Inspection visits.*

Enactive. Instructional.

Art. 2. Objects and businesses of such visits, these,—

1. Seeing that by those several Judicatories, in so far as in them lies, execution and effect is given to the several ordinances of the Legislature.

2. Preservation of mutual conformity and symmetry, as between each Judicatory and every other, in respect of the mode of giving execution and effect to the *substantive* branch of the law, through the *adjective* branch, that is to say, the system of Judicial *procedure.*

3. Taking cognizance of appropriate aptitude, on the part of the several functionaries, with a view to continuance, dislocation, suspension, or translation, as per Ch. ix. Ministers collectively, Section 4, *Functions in all*, Art. 44.

4. So, with a view to the promotion of them in their several situations, to the like in Appellate Judicatories.

5. Settling any such differences as may have place between a functionary in one line, and a functionary in another line; as per Ch. xii. Judiciary collectively, Section 3, *Judiciary functionaries:* for example, Judge, Government Advocate, Eleemosynary Advocate, and Registrar; and so, as to the several *ministerial* functionaries.

Instructional. Ratiocinative.

Art. 3. As to the *time* of visitation, diversifications it admits of, are these. It may be *periodical*, or *occasional;* if occasional, the occasions may be determined either by *choice*, or by *chance.*

1. Of its being *periodical*, the use is this:—To persons at large, to all to whom it may happen to have *complaints* to make, *informa-*

tion to communicate, or *meliorative arrangements* to suggest, *time* will thus be given, and that in so far as may be, *adequate*, for arranging their respective affairs, in such sort as to minimize the inconvenience produced by *attendance* at the Justice Chamber.

2. In the case where the time, though not periodical and accordingly fixed, is determined by *choice*, the like convenience has place. Not, however, in so great a degree; for on the part of the several individuals in question, the degree of convenience will be diversified: depending on the quantity of time, between the moment at which the *notification* of the intended visit takes place, and the moment at which the termination of that same visit actually takes place.

Instructional. Ratiocinative.

ART. 4. Such is naturally the good effect of choice. Now for the bad effects:—

1. In so far as the *time* is placed under the command of *choice*, a danger, which has place, is,—lest, through the influence of some particular and sinister interest, whether in the shape of self-regard, sympathy, or antipathy, in the mind of the thus visiting functionary, *wrong* should be done; wrong, either to the public service or to this or that individual interest.

2. Whether any such sinister interest having had place, the correspondent bad effect has or has not been produced,—a *suspicion* to that effect to an extent more or less considerable may have place in the public mind.

Instructional. Ratiocinative.

ART. 5. Remains the case where the time, not being fixed but occasional, is determined by *chance*.

Of this mode of determination the *good effect* and *use*, is as follows:—The time not being foreseeable, the consequence is,—that at every moment of time, as much as at any one such moment, it concerns all those whose conduct is to be inspected, to maintain that conduct in a state in which it will abide this trial.

Instructional.

ART. 6. The practical conclusion seems to be as follows:—

1. Periodical visitation at fixed times—that is to say, once a-year; or in the course of the year, at two, three, or any greater number of times,—equally, or not very unequally, distant from one another, according to circumstances.

2. For particular reasons on each occasion assigned,—the day of the Justice Minister's occasional visitation determined in each instance by *choice; preceded* by *notice*, having for its object the attendance of all persons desirous of attending.

3. In addition to these announced and foreknown days, days of visitation determined by *chance:* that is to say, by *lot:*—the lots so drawn, as to minimize the interval between the moment at which the lot is drawn, and the moment at which the visit of the Justice Minister is made known to the functionary, of whose conduct he comes to take cognizance. To this purpose,—in so far as it can be effected, without losing time by travelling backwards and forwards, the lots may be drawn, not only at the moment next before that of his setting out for the Justice Chamber, *first* visited by him, but then and there also for the determination of the Justice Chamber *next* to be visited: and so on.

Instructional.

ART. 7. To the intent that, in the breasts of the several functionaries, the expectation of being eventually subjected to such inspection may be kept effectually alive,—the Legislature will perhaps see sufficient reason for appointing a certain number of judicatories, to be in the course of each year subjected to these same inspection visits, leaving the individual judicatories to be determined by *lot*.

Instructional.

ART. 8. So, likewise, as to the offices of the several Local Headmen and their respective Registrars: as per Ch. xxv. and xxvi. To these offices apply the several preceding Articles of this present Section.

Instructional.

ART. 9. For the mode of taking by *lot*, the decision of *chance*,—see Ch. ix. MINISTERS COLLECTIVELY, Section 16, *Locable who, Supplement*.

Instructional.

ART. 10. As to the Appellate Judicatories,—whether they shall be subject to these visitations of the Justice Minister, will depend upon their local situation: if it be *in* the metropolis, yes: if *elsewhere* than in the metropolis, no.

SECTION IV.

Judicative Function.

Enactive.

ART. 1. In the exercise of this function, the Justice Minister takes cognizance of *petitions*, complaining of *oppression* or *denial* of *justice*, in an *Appellate* Judicatory: of the like complaints in relation to an *Immediate* Judicatory, cognizance, in the first instance, belongs to Appellate Judicatories.

Enactive.

ART. 2. In consequence of any such complaint, or spontaneously, he may deliver to any Judge, or other officer belonging to his department, in public, a sentence or order of *dislocation;* or a *recommendation* or *permission* to *resign:* in case of such recommendation or permission, he grants a public hearing, if, for

restrictions, cautions, and instructions in relation to the various grounds, respectively hereinafter particularized:—

I. Ground the first.—Of exculpative evidence, discovery made at a time subsequent to the conviction of the delinquent in question.

Care may, in this case, require to be taken, lest the convict, being in time apprized of the existence of the evidence in question, should purposely postpone, till after conviction, the elicitation of it: for example, for the purpose of averting the elicitation of some counter-evidence, the elicitation of which may, by the expected death or expatriation of the evidence-holder, be accordingly averted.

Enactive. Instructional.

ART. 6. II. Ground the second.—Service, expected to be rendered by the convict, by information having for its effect the prevention of otherwise future acts of delinquency.

Adequate assurance will, on this occasion, require to be obtained, not only that by means of the information thus afforded by the convict, the offences in question will have been prevented: but also, that without it, they would not have been prevented: and, accordingly, that the delinquent not having himself been able to communicate the information, was not, by some other person who had become possessed of it, made the channel of communication for the purpose of his obtaining the remission of the punishment.

Enactive. Instructional.

ART. 7. III. Ground the third.—Service expected to be rendered by the convict, by the prevention, frustration, or repression of acts of hostility, or the diminution of the maleficent effects of hostility at the hands of a foreign power.

In this case also, in like manner, will care require to be taken, to prevent the impunity-conferring transference of merit, as per No. II.

Enactive. Instructional.

ART. 8. IV. Ground the fourth.—Service expected to be rendered by the convict, by the prevention, or the diminution of the effects, of some physical calamity.

Of the several calamities to which human nature stands exposed, see a list in Ch. xi. MINISTERS SEVERALLY, Section 5, *Preventive Service Minister*, and Section 10, *Health Minister*.

Care will, in this case also, require to be taken, in like manner, to prevent the impunity-conferring transference of merit, as per No. II.

Enactive. Instructional.

ART. 9. V. Ground the fifth.—Service expected to be rendered by the convict, by the communication of some useful invention or discovery.

Care will, in this case also, require to be taken, in like manner, to prevent the impunity-conferring transference of merit, as per No. II.

So, likewise, that the good reasonably to be expected, from the invention or discovery, be of sufficient magnitude to overbalance whatsoever evil may reasonably be apprehended from the impunity thus conferred.

And in this view the Public-Opinion Tribunal will have its eye on the line of conduct on this occasion pursued by the Justice Minister.

Enactive. Instructional. Ratiocinative.

ART. 10. VI. Ground the sixth.—Service actually rendered by the convict in any one of the four shapes above specified.

Care will, in this case also, require to be taken in like manner, that there be a reasonable ground for the persuasion, that the good produced by the service in question was, or was about to be, of sufficient magnitude to overbalance whatsoever evil may reasonably be apprehended from the impunity thus conferred.

On the other hand, it will be borne in mind, that a reward bestowed for a past service operates as a reward offered for all similar future services; and that thereby service may in countless shapes be purchased.

On the other hand, again, if a man has in contemplation a favourite crime, from the commission of which he looks for inordinate gratification, the contemplation of reward, in this shape, may lead him to add to the service in question the maleficent act so contemplated.

Enactive. Instructional. Ratiocinative.

ART. 11. Grounds on which, to whatsoever other functionary it *may*, it will *not* belong to the Justice Minister to exercise, at any one of the above-mentioned points of relative time, as per Art. 3, the dispunitive function in every one of the above modes, as per Art. 2. They are these which follow:—

I. Ground the first.—Regard for the amity of a foreign power or foreign powers. It may be that, under the particular circumstances of the case, from ill-will, with or without acts of hostility, on the part of a foreign power, evil would result, of such magnitude, as to overbalance whatsoever evil may reasonably be apprehended from the impunity thus conferred.

But, in the situation of the Justice Minister, for the forming a correct estimate of a service in this shape, means will not, in general, be possessed so adequate as those which are accessible to a functionary occupying the situation of Prime Minister: to him, therefore, in this case, the function is committed.

Enactive. Instructional. Ratiocinative.

ART. 12. II. Ground the second.—Regard for the amity of the people of the state to which the individual in question belongs.

In no place, at no time, under no form of government,—not even under the form congenial to this Code,—can the people at large be reasonably regarded as likely to be s

upon a level with the Members of their Legislature, in the scale of appropriate intellectual aptitude, but that in consequence of some delusion, a portion, more or less considerable, of the community, may not be to such a degree averse to the execution of this or that penal law, or attached to the particular delinquent, that whatsoever evil may reasonably be apprehended from the remission of the punishment, on the individual occasion in question, may be overbalanced by the joy in the event of the remission, and the chagrin in the event of the execution. But, in this case, for the same reason as in the case No. I., the exercise of the dispunitive function belongs—not to the Justice Minister, but to the Prime Minister.

Enactive. Instructional. Ratiocinative.

Art. 13. III. Ground the third.—Multitude of co-delinquents. In this case, for the same reason as in the case No. I., the exercise of the dispunitive power belongs—not to the Justice Minister, but to the Prime Minister.

Various offences there are in which, with or without mutual consent, it may happen to individuals, in numbers altogether unlimited, to embark: in particular, such as are distinguished by the appellation of political, consisting, as they do, in acts of hostility to the ruling powers. In the course of a *civil war*, it may happen to the minority, in any proportion, to have the upper hand, and, by that means, to be in possession of all the powers of government. In such a state of things, the whole number of the members of the community, with the exception of those members of the minority, may be in the condition of co-delinquents: and, to avoid giving exercise to the dispunitive power—and *that* at a time antecedent to *judicial pursuit*, or say *prosecution*—would be not merely inexpedient, but physically impossible.

Enactive. Instructional. Ratiocinative.

Art. 14. IV. Ground the fourth.—Service rendered or about to be rendered by the delinquent in question, by information contributory to the conviction of some co-delinquent or co-delinquents.

In this case, to give exercise to this power of remission will belong—not to the Justice Minister, but to a Government Advocate: that is to say, to the Government Advocate of the Judicatory, by which cognizance was originally taken of the offence. By the Justice Minister it will not be to be exercised, for the same reason for which the power of a Judge Immediate will not, except in cases of rare necessity, be exercised. By the supposition, by the Judge Immediate it will not be to be exercised, because the exercise of it has for its effect, the preserving the delinquent from being, in the character of a delinquent, brought before any Judge Immediate.

On the three points following, adequate assurance will on this occasion require to be entertained.

1. That *with* the information, for which so great a price will have been paid, the whole of the evidence necessary to warrant the conviction of the whole number of the defendants in question, whatsoever it be, will be obtained.

2. That *without* it, no sufficient evidence against any one.

3. That *with* it, will be obtained the evidence applying to as many as may be, of the whole number of co-delinquents, of which it is desirable to obtain the conviction.

Proportioned to the magnitude of the evil of the offence, is the magnitude of the price thus offered, for the hope of contributing to the prevention of it in future. To confer impunity on one delinquent with no other effect, and for no other purpose, than the faculty of applying punishment to another, is, if by supposition that same faculty can be obtained *gratis*, a bargain palpably absurd.

Instructional. Exemplificational.

Art. 15. Mind now the practical consequence. Where such is the practice, the existence of it constitutes a sort of apparent and virtual law, which makes itself known to the fraternity of criminals of all sorts. It thus operates as a premium, as an encouragement, to all crimes to which it applies itself. A man says to himself—"I will get men to join with me in the commission of this crime: I will reap myself all the *benefit* of it, and by information given to the judicial authority, I will impose upon them the whole burthen of the punishment."

What, if to the encouragement in this shape, be added, under the express name of a reward, a pecuniary donation: the payment of it, having for a condition, the conviction of the co-delinquent in question? Here, then, is encouragement offered by authority,—offered according to law,—for two atrocious and distinct, though so intimately connected, crimes: in the first place, the principal crime in question; in the next place, the utterance of mendacious evidence, whatsoever it may be, that may have presented itself as necessary, or conducive to the obtainment of the reward.

Under English law, thanks to the sinister industry of the Judges, the wretched succedaneum to law, by which so large a portion of the field of legislation is covered, being of their formation, this practice is still in vigour. To the defendant himself, an interrogatory, the effect of which might, by means of his confessorial evidence, his evasions, or his silence, be to afford demonstration of his guilt, is not suffered to be put. Why? because, forsooth, the talking of any one of those crimes would not be pleasant: a reason which, if admitted to give determination to the conduct of the legislator, would have the effect of giving impunity to every malefactor, and complete license to every crime. Pleasing to him!

No, assuredly it will not be, if he is guilty: but not less assuredly it would be, if he is innocent.

Instructional.

ART. 16. Three several modes there are in which, in an indirect and unobserved way, impunity may, in practice, be given to acts marked out for punishment by the direct declaration of the law. In two of these instances, the authority by which the effect is produced is the legislative: in the third, it is the judiciary. In the first two, the relative time at which the remission applies itself, is anterior to prosecution: the remission is, in a word, *ante-prosecutional:* in the third case, it is *post-prosecutional*, and commonly *post-convictional*. The effect, in some cases, is *completely remissive;* in others, no other than *suspensive*.

Instructional.

ART. 17. The impunity in one of these three cases has commonly for its cause, want of perspicacity, and thence, presence of inadvertency in the mind of the legislator: he sees not that, to an extent more or less considerable, the effect produced by his enactment will be —not the effect declared by him to be intended to be produced, but the reverse of it. Such, for example, and to a prodigious extent, is the result, in the case in which, to the act, which is taken for the subject matter of prohibition, stands attached punishment in no other shape than that of a pecuniary penalty. Where, to an extent more or less considerable, a profit from the offence rises to an amount exceeding the loss by the payment of the penalty,—to the amount of the difference between the loss and the profit, the effect of the law is, in this case, not merely that of a license, but that of a premium, or say, a bounty on the commission of the offence. As to this, see the work intituled NOMOGRAPHY, Ch. ix. (in vol. iii. p. 280, of this collection.)

Instructional.

ART. 18. In the second of these cases, the result has commonly for its cause, the perspicacity, foresight, and prudence on the part of the legislator. This state of things is exemplified in the case, where, having by the Substantive branch of his Code, interdicted the act in question, and attached a punishment to the commission of it, by the Adjective branch, or say the Procedure Code, he excludes from the right of prosecuting for it, every person other than a Government functionary, acting under the direction of the Prime Minister under a Democracy, such as the present one: a functionary—namely, the Government Advocate of the Immediate Judgeshire or the Government Advocate-General: under a Monarchy, the functionary acts under the direction of the monarch: in which state of things a virtual dispunitive function is reposed in the hands of the Monarch in one case, of the Prime Minister in the other case.

Instructional.

ART. 19. In this case, on the subject of acts of any particular description, supposing the legislator to act under the guidance of the greatest-happiness principle, suppose it should be his opinion that, in regard to the sort of acts in question, from the attaching punishment to them, the happiness of the community would experience diminution: at the same time that towards persons by whom those acts are practised, or supposed to be practised, ill-will, or say antipathy in the breasts of a portion more or less considerable of the community has place, in such sort, as that it is their desire to see punishment of the sort and to the amount in question, inflicted on persons by whom those acts are, or are supposed to be practised; and that such is the intensity of this desire, and such the extent to which it has place, that were it contravened, the evil, consisting of their disaffection towards the Government, would be greater than the evil produced by the attaching to the acts in question, punishment in a sort and quantity, by which the mass of ill-will in question would be saturated.

Instructional.

ART. 20. On this, or some other (no matter what) consideration, by a Legislature of former times, to acts of the description in question, punishment has been attached. By the actual application of punishment to those same acts, at the institution of the present Pannomion, in the opinion of the Legislature (suppose) the happiness of the community would experience, not increase, but diminution. At the same time it apprehends, that after the habit, which the community has been in, of seeing punishment attached to the acts in question, were no punishment to be attached to them by the new law, the consequence would be that from the observation of the change, a portion more or less considerable of the people, would not only experience dissatisfaction, but dissatisfaction to such an amount, that the evil composed of it, would be greater than the evil composed of the application made of the punishment in question to the delinquents in question. In this case, what course shall be taken? A course, which in a case of this sort has been taken, is, such as that indicated in Art. 18. In this way, the dissatisfaction in question is left unproduced, —the tranquillity of the public mind is undisturbed.

Instructional.

ART. 21. Bad opinions—acts consisting in the giving expression and publicity to bad opinions. By legislators of most, if not of all nations, to acts of this description, punishment has been attached. To inquire what the relation is, which has place between legislation to this effect, and the happiness of the community, belongs not to the present [illegible] What *does* belong to the present pu-

the observation, that supposing this policy advisable, here is a case in which the purpose requires, that, with reference to acts of the description in question, the power of remission, with regard to whatsoever punishment stands attached to them, should in this indirect and silent way, be committed to the Government Advocate, and through him to the Prime Minister.

Instructional. Exemplificational.

Art. 22. In the third of these cases, the remission of the punishment, and the virtual though indirect exercise of legislative authority, is exercised by the Judiciary.

In this way, the evil capable of being produced, and which in certain countries, in England more particularly, actually continues to be produced by it, is such as cannot but excite the astonishment of succeeding generations. The simple word *void*, or its synonym, the compound word *null-and-void*, is the instrument by which the effect is produced—the impunity conferred. For the pronunciation of this word, some pretext is always made, but no pretext is too frivolous to be employed and serve. In the original writing, or copying of a written instrument, for example, in one of the words, a letter which ought to have been inserted, is not inserted; or a letter which ought *not* to have been inserted, *is* inserted. On this ground, without any other—without any the least regard to innocence and guilt, be the crime ever so atrocious, the criminal, after the most undoubted proof of his guilt, receives in this way, impunity from the hands of the Judge, and is turned by him, loose into society, to go on, and add crime to crime.

Instructional.

Art. 23. As often as, in this way, remission of punishment takes place, legislative power is usurped: and the usurpers are—the draughtsman, on whom the instrument depends for its aptitude, and the Judge who on so frivolous a pretext, sets himself above the Legislature, overrules its declared will, and frustrates its design.

Instructional.

Art. 24. Such is the efficiency of habit and custom, in expunging all sense of shame, that the practice of conferring impunity on known criminals, and thus violating the authority of the Legislature, is on the part of all Judges (of the rank in question) an avowed practice: this being one of the modes in which decisions are pronounced on grounds foreign to the merits: a mode of proceeding which no such Judge ever scruples, or hesitates to speak of himself as practising.

Instructional.

Art. 25. A few years hence, when corruption has put on incorruption, and the eyes of the great body of the people have opened themselves, what will men think and say of the probity or the intelligence of the Judges by whom the practice could be persevered in,—of the legislators who could leave such Judges unpunished,—and of the people who could continue their submission to such legislators?

Enactive. Expositive. Instructional.

Art. 26. Of all the several cases in which, as above, the dispunitive function is intrusted to the Justice Minister, in no one will the remission be justified, otherwise than on the ground of an individual matter of fact, the existence of which has been made known by appropriate and adequate evidence, elicited in the same manner, as the evidence, on the ground of which convictions are pronounced.

Instructional. Expositive. Ratiocinative.

Art. 27. On no other supposition, than that thereby the aggregate of the happiness of all persons interested, will in that case be greater than in the opposite case, can the application of evil in the shape of punishment be justified: on no other ground than this, can the remission of punishment be justified: and if in the one case, the existence of the matter of fact, of which the justification for the exercise made of the power of punishment, ought to be established by appropriate and adequate evidence, suited to the nature of the case, so ought it in the other. In the one case, not more than the other, should the happiness of the person interested be dependent upon the arbitrary will and pleasure of any person, whose interest it may be, or may appear to him to be, to make sacrifice of it.

Enactive.

Art. 28. When, in consequence of such *ex parte* evidence as hath been delivered in to him, the Justice Minister determines to make complete inquiry into the truth of an alleged ground for the exercise of this his dispunitive function, he will either himself complete the elicitation of the evidence, or for the completion, issue his mandates to the Judge, or Judges Immediate, of one or more Judgeshires, (the Judgeshire in which the conviction took place, included,) according to the place or places, in which the Evidence-holder or Evidence-holders have his or their residence.

Expositive.

Art. 29. When it is not to the Justice Minister, but to the Prime Minister, that the exercise of this power is committed, the need of evidence is not less incontrovertible, than where it is to the Justice Minister, that this same trust is committed. But the evidence, assorted to the nature of the case, is different in the one case from what it is in the other. In the cases in which it is to the Justice Minister, that the ascertainment of the fact is committed, the appropriate evidence is not already in his possession, but is capable of being elicited, by in-

terrogatories addressed to individuals, on that particular occasion, for that particular purpose: in the cases in which it is to the Prime Minister that the ascertainment of the fact is committed, all the facts which bear upon the case have already, in so far as they are capable of being made known, been made known to him accordingly, by evidence, such as it belongs to his situation to receive.

Instructional. Ratiocinative.

ART. 30. As to the relative time, generally speaking, in no other case than where conviction has already taken place, will application be made for the exercise of the dispunitive function by the Justice Minister. The alleged delinquent, does he expect to be declared *Not* guilty? Application for remission of the punishment would be a virtual confession of guiltiness, and correspondent loss of reputation would be the natural consequence. Does he expect to be pronounced *Guilty?* Still he may as well take his chance for acquittal, for example, by the death or expatriation of a necessary witness; and when the worst that can happen has happened, namely the pronunciation of the decree of conviction, it will then be time enough for application to be made for the remission.

Instructional.

ART. 31. The only case in which, to a man who expects to be otherwise convicted, it may happen to appear eligible to obtain remission, antecedently to conviction, is where, to preserve his reputation from the wound it would receive from the individual facts which would be divulgated by the inculpative evidence, if elicitated, he subjects himself in preference to the evil resulting from the general prevalence of the opinion of his having been guilty of an act of the sort in question, unaccompanied with any distinct conception of its particular circumstances.

Instructional.

ART. 32. Between the Penal Code, considered as occupied in the appointment of the several punishments for the several offences, and the part of the Constitutional Code thus occupied in declaring in what cases the application of such punishment shall be superseded, nothing of contradiction or inconsistency has place: for, the cases in which exercise may be given to the dispunitive function, constitute so many exceptions to the more general rules, by which those same punishments will respectively have been appointed.

Enactive.

ART. 33. At any time, if any circumstance, over and above those herein above-enumerated, presents itself as fit to be constituted an efficient cause of remission, the Justice Minister will forthwith make report thereof to the Legislature: suspending execution until the will of the Legislature shall have been made known.

Instructional.

ART. 34. *Pardon, to pardon, mercy, to show mercy*—to no such words does any place belong in the vocabulary of this Code.

Instructional. Ratiocinative.

ART. 35. Power of pardon supposes tyranny in the same hand. Exercise of the power of pardon is occasional relaxation of the habitual tyranny, habitually exercised by the same hand. Where, without *obligation* to exercise it, power of punishment *is exercised*, tyranny is exercised. True it is—that, as on every occasion, it is better that tyranny be not exercised than exercised; so, on every occasion where no obligation to inflict punishment is imposed, it is better that it be not inflicted than that it be inflicted. But, on every occasion on which, on adequate grounds, the obligation of inflicting punishment is by law imposed, it is better that it be inflicted than that it be not inflicted; and the non-infliction of it by him by whom it should have been inflicted, so far from being a meritorious act, is, or should be made a punishable offence.

Instructional.

ART. 36. Such being the real effect and true character of this power, behold now the character ascribed to it by the unreflecting and deluded multitude: behold hence the support and encouragement given by this delusion to absolutism and tyranny: proportioned to the quantity of the praise bestowed upon this power is the evil produced by it.

Instructional.

ART. 37. The more oppressive the tyranny of which the law is thus made the instrument, the greater is the quantity of the good capable of being done by the non-exercise of it: and the greater the quantity of good capable of being thus done, the greater is the quantity of *praise* capable of being thus purchased. Thus it is that in a monarchy not only is praise elicited by the exercise of tyranny, but the more enormous the tyranny the greater is the quantity of praise thus undeservedly and insidiously obtained.

Instructional. Exemplificational.

ART. 38. Look at the Roman emperors of old times! Look at the oriental despots of all times! Never were a Titus or a Trajan so much lauded as a Nero or a Domitian. Life and death being at his option, the monarch receives laud for every subject he abstains from putting to death. To the Almighty in heaven man is indebted for his creation; to the Almighty here on earth for his preservation.

Instructional.

ART. 39. Thus, combined with cruelty, wit

insincerity, with artifice, and with fraud, no wonder if to long-robed sycophants the power of pardon should be the subject of such ecstatic eulogy: by one class held up to admiration by some such appellative as the most valuable *jewel* of the Crown: by another, even to adoration, as being an attribute communicated by the one God to his express image and representative here on earth. For, true it is that, by whomsoever exercised,—in him it supposes the existence of tyranny, and of that same tyranny, he is in this respect the most valuable, as being not merely the least odious but even the beloved instrument.

Instructional.

Art. 40. By pretences thus false, is praise thus filched from the deluded people by the sceptred hypocrite.

Instructional.

Art. 41. Popularity gained by tyranny! What a paradox! Yet, where is the monarchy in which that paradox has not been endeavoured to be verified, and the endeavour crowned with a deplorably extensive success?

Instructional.

Art. 42. *To pardon* is to be an *habitual* tyrant: to *show mercy* is to have exercised tyranny.

Scarcely, if at all, less odious should the words *pardon* and *mercy* be than the word *tyranny* itself. Tyranny is itself without a mask: *pardon* and *mercy* are tyranny under a mask.

Instructional. Ratiocinative. Exemplificational.

Art. 43. Conceive a state of things in which the punishment, being *death* punishment, the numbers of the persons convicted and sentenced are *hundreds*, and the numbers executed are *units*. Of this state of things, what can have been the cause or causes? *Answer*—Causes, these which follow:—

1. The greater the number of those to whom this part of the punishment is remitted, the greater the number of those over whom an arbitrary power of life and death is exercised: exercised by the unknown functionaries, by whom, with or without just cause, this vast power is exercised; exercised in secret and without any the slightest responsibility or apprehension of it.

2. The gratification reaped by the pride of these same individuals—the pride of repealing, *pro tanto*, the enactments of the legislature, and thus exercising a power over the so-styled supreme power.

3. To *absolute* rulers, and their adherents, the advantage of impressing on the imaginations of the people, the idea of a sort of Godhead upon earth, as residing in the person of the man, woman, child, or madman, whichsoever it might happen to him or her to be.

4. It operates—this idea—in confirmation of the notion, that it is to the bounty of a human creature, thus situated, that every other member of the community stands indebted, for everything valuable that he or she is in possession of: and that as to him or her, when so pleased, it belongs to *give*, so to him or her, when so pleased, it belongs to *take away*.

5. In every charter received from a monarch, and referred to as a source of *right*, a proposition to this effect is implicitly contained: royal bounty in this shape is assumed to be the only security for good government, which the people ought to have: were it not for this concession, he or she would have had, and would continue to have, the right of doing with them whatsoever he or she pleased; and would have been in the right, had he or she done so.

6. In regard to monarchy in general, and limited monarchy in particular, a vague conception which has place in the minds of all its adherents, is, that being thus rotten, the props which, by deception and delusion in all imaginable shapes, are supplied to it, cannot be too strong or too abundant.

7. The Judges on whom, in so considerable a degree, the lot of the delinquent in question, in respect of the difference between life and death depends, are in their minds divided as to this matter: to some the supposed additional security, by putting out of the way so many men, by whose existence their property, and by possibility their persons, and even their lives, appear to them to be kept in jeopardy, presents itself as the most valuable benefit: to some, the exercise of arbitrary power in saving the lives of delinquents as above, presents itself as most desirable: in this exercise of a power above that of the legislature, the last behold the very thing they wish for: the others put up with the state of things in question, as well as they can; not being able to obtain anything more congenial to their taste.

8. The Judges, having reduced the value of punishment in the shape or say dimension of *certainty*, or say *probability*,—those among them, who are partisans of death punishment, feel what appears to them, the need of increase to it, in the shape or dimension of *intensity*.

9. Death being regarded as the natural and original punishment, due to all such offences as are regarded as criminal, punishments other than death punishment, have, when considered as applied to offences of this description, come to receive the name of *secondary punishments*.

10. To *prevent* the institution and application of those secondary punishments has from the first been the endeavour of the English Judges of the highest grade—styled the *Westminster Hall Judges*: Judge Blackstone being the only one who joined in the *promotion* of it: Blackstone, with whom, together with Howard and Eden, the Penitentiary system, according to the *first* conception of it, originated.

11. When they failed in this, their next endeavour was, to keep or make these secondary

punishments as expensive as possible: and in this, all who joined in it, were but too effectually seconded by a secret intrigue, set on foot by George the Third.

12. A plan had been presented to, and eagerly, not to say rapturously, taken up by, the ministers of that king—by Pitt the second, and by Lord Mansfield the first—a plan by which (not to speak of collateral advantages, moral, and economical, such as conception had never till then reached to) the expense of the maintenance and employment of prisoners would have been reduced from the first to next to nothing.

13. *George the Third* having conceived a secret pique against the proposer, by whom the plan was to have been carried into execution, kept the business in a state of delay, by secret management, from the year 1794, to the year 1811, this delay having been preceded by two years and more of delay, between March 1792, the time of acceptance, and July 1794, the time of passing the act of parliament, his assent to which had, by means unknown, been obtained by those same ministers for that purpose.

14. At length arrived the year 1811, when the time was thought to be arrived for putting an end to this economical scheme altogether: benevolent and influential men, in considerable numbers, still pressing for the penitentiary plan, a sort of composition was entered into with them; by the Secretary of State for the Home Department, Lord Viscount Sidmouth, a Committee of the House of Commons was got up for form's sake: the act of 1794 was formally and virtually repealed, and the still existing plan substituted.

15. Of this plan, the expense of the mere construction of the building has been computed at £1000 per prisoner: to what a degree the expense of secondary punishment in this form, upon an all-comprehensive scale was unpopularized, and represented as impracticable, may be imagined.*

SECTION VI.

Jurisdiction-adjustive Function.

Enactive. Expositive.

ART. 1. In the exercise of this function, in case of dispute or doubt, as to which of two or more judicial functionaries, belongs the exercise of this or that power, or function, the Justice Minister, in subordination to the Legislature, issues a decree, opinative and imperative, declaring by whom, if at all, and in what manner, the *power*, or say *function*, in question, ought to have been exercised.

Enactive.

ART. 2. This power he exercises, whether the functionaries in question, as above, belong to the same Judicatory, or to different Judicatories.

Enactive. Instructional.

ART. 3. Of such his decision, the subject matter may be, not only that which, under the existing law, in his opinion, had place, but also what, in such his opinion, ought in *future* to have place: in a word, the function on this occasion, exercised by him, may be—and in case of need, is expected to be,—not only the *interpretative*, (as to which, see Ch. xii. Section 22, *Judges', preinterpretative function*,) but also, the *eventually-emendative*, (as to which, see Ch. xii. Section 20,) proceeding, *mutatis mutandis*, in manner as therein directed.

Instructional.

ART. 4. In so far as, if the order of the one Judge is executed, the execution of an order of the other Judge is thereby impossibilized, the prevalence generally belongs to the order to which execution has begun to be given, before it has begun to be given to the other.

Instructional. Exemplificational.

ART. 5. Of the incompatibility thus brought to view, examples are as follows:—

1. By an accersitive mandate of one Judge, the attendance of a certain person at a certain point of time at his Judicatory is required. By another Judge, he being ignorant of such order, the attendance of that same person at that same point of time, at his Judicatory, is by an appropriate mandate required.

2. By a prehension mandate of one Judge, for the purpose of securing the means of eventual execution to a demand on the ground of debt, property situated within the territory of another Judge is required to be prehended and kept in custody: by a like order of some other Judge, for the like purpose, on occasion of a similar demand, by another demandant, that same property is required to be so dealt with, at the same point of time, for the benefit of such other demandant.

SECTION VII.

Term of Service.

Enactive.

ART. 1. In the case of a Justice Minister, after the *expiration* of the preparation period, as per Section 10, *Locable who*, the term of service is the term of his life: subject only to causes of dislocatedness, as per Section 12, *Dislocable how*.

Enactive.

ART. 2. *During* the preparation period, exceptions excepted, of no Justice Minister

* Further information will be found on the subject of this article, in the correspondence as to the Panopticon, attached to the author's Memoirs and Correspondence, as published in this collection.—*Ed.*

[illegible] more than one solar [illegible] Section 19, *Locable* [illegible]

[illegible]

[illegible] will be, if before the [illegible] have place: in [illegible] for the remainder [illegible] during the [illegible]

[illegible] VIII.

[illegible]

[illegible] *Ratiocinative.*

[illegible] Minister's pay is [ ] [illegible] every Sub-Min- [illegible] him only: it is [illegible] residence. Of power, [illegible] valuable [illegible] composed: dignity, [illegible] proportionable [illegible]

[illegible]

[illegible] Justice Chamber, [illegible] furnished by the [illegible] the public ex- [illegible]

[illegible]

[illegible] pay, is added in- [illegible] of Inspec- [illegible] *Ministerial func-* [illegible] per mile, actually [illegible] per day and night, [illegible] At his offi- [illegible] on his return from [illegible] will be paid to him [illegible]

[illegible] IX.

[illegible]

[illegible] residence, or, [illegible] Inspection Visit, he [illegible] the same times [illegible] Section [illegible]

[illegible]

[illegible] Registrar, whose [illegible] official [illegible] kept. [illegible] Calendar, [illegible] several Ju- [illegible] Immediate; [illegible]

[illegible]

[illegible] of the relative preparation period,—in other words, from and after the commencement of the relative consummation period, as to which two periods see Ch. xii. Judiciary collectively, Section 28, *Locable who*, and Ch. ix. Ministers collectively, Section 16, *Locable who*, no person will be locable in the situation of Justice Minister, who has not, after serving [two] service years in that of Immediate Judge Principal, served [two] service years in that of Appellate Judge Principal.

Enactive.

Art. 2. *During* the preparation period, no person who has not, after serving one *service* year as Judge *Immediate* Principal, served one service year as Judge *Appellate* Principal, will be locable, so soon as any apt person exists who has so served.

Enactive.

Art. 3. Until such presumption of appropriate aptitude, as is afforded by service, as per Art. 1, has come into existence,—the *Legislature* will make its election out of all such persons, to whom, in such a state of things, it has happened to have afforded such presumptive evidence of appropriate aptitude, as the nature of the case admits of.

Enactive.

Art. 4. During the *preparation period*, of no Justice Minister will the term of service be for solar years, more than *one*, nor will any person, who has served during *one* year, be eligible on any *other* year, of that period.

Ratiocinative.

Art. 5. Why, during the preparation period, dislocate the Justice Minister without proof, or so much as imputation of blame-worthy conduct, after he has served no more than a single year?

Answer. Reasons.

1. To the end that, when the choice comes to be made of a Justice Minister whose term of service is for life, those to whom it belongs to choose may have two persons out of whom to choose: two persons, of each of whom experience in equal quantity has been had.

2. A consideration by which this experience is rendered the more needful is, that at the commencement, and throughout the whole course of the *preparation period*, out of no persons will the choice have to be made other than such as, in the profession of Advocate, had been inured to the indiscriminate defence of right and wrong, by the indiscriminate utterance of truth and falsehood.

Section XI.

Located how.

Enactive. Ratiocinative.

Art. 1. By the Legislature, as is the Prime

Minister, so is the Justice Minister located: by the Legislature, to whose will it belongs to the Justice Minister to provide in chief, for giving execution and effect in *contested*, as to the Prime Minister in *uncontested* cases.

Enactive.

ART. 2. Until Judicatories Immediate have for [one year] been in activity, no restrictions in the choice of the Legislature have place in this case, other than those which have place in the case of the Prime Minister.

Instructional. Ratiocinative.

ART. 3. Question. Why place the power of locating the Justice Minister *not* in the hands of the Executive Chief, by whom the other Ministers are located, but in the hands of the Legislature?

I. Why in the hands of the Legislature?

Answer. Reasons.

1. The use of the office of Justice Minister is to give execution and effect, in the surest manner, to the ordinances, which are the expressions of the will of the Legislature: to give execution and effect to it, namely, in the case in which, from whatever cause, instead of obsequiousness, it experiences contestation.

2. Supposing the purport of that will ascertained, obsequiousness could not be too prompt, too unreserved, or too universal.

3. Were the time of the Legislature sufficient for the despatch of this business, in addition to their own, by *them*, this function ought, for the above reason, to be exercised. But, by want of time, they are debarred from the exercise of this additional function, as, by want of time, the members of the Constitutive are debarred from the exercise of the Legislative, and the members of the Legislature from exercising that of the Executive Chief.

Instructional. Ratiocinative.

ART. 4. II. Why not in the hands of the Constitutive?

Answer. Reasons.

1. On the part of the Constitutive, want of time: namely, want of time for the exercise of this function, in addition to that paramount function from which their authority takes its denomination, namely, in its application to the authority of the Supreme Legislative, as also, as will be seen in its proper place, in its application to the Local Legislatures—the Sub-legislatures.

2. Note here a distinction. Not in the want of time for the *bare exercise* of this function, does the efficient cause of inaptitude consist in this instance: only in the want of time for the *acquiring* the appropriate knowledge—the appropriate materials for apt judgment: in a word, for acquiring adequate *intellectual aptitude*.

3. On the part of the people at large, by the here proposed function of the Justice Minister, notwithstanding its importance, no attention will be attracted equal in intensity and extent to that which will of course be attracted by the functions of members of the Supreme Legislature: no such ample means of judging will, therefore, in this case, be put into the hands of the people, by the discussion carried on in the Public-Opinion Tribunal by the leading Members.

4. The object or end immediately in view being the giving execution and effect, on each occasion, to the will, whatever be the object, of the Legislature itself, the degree of interest with which the Legislature will see to the execution of its own will, will naturally be greater than any interest with which the members of the constitutive would see to the execution of a will, in the formation of which they had not any of them any immediate share.

5. As in the instance of every other head functionary, so in this, it is essential that the power of *dislocation* should be in the hands of the constitutive. But it is moreover essential that, in this case, the power of location should not be in the same hands as is the power of dislocation. Why it should not be so in the case of the situation of Justice Minister, by whom it is proposed that the several Judges be located, will appear from the reasons which apply to the situation of the Judges themselves.

Instructional. Ratiocinative.

ART. 5. III. Why not in the hands of the Executive Chief?

Answer. Reasons.

1. For a reason similar to the second of the reasons applying as above to the situation of the constitutive. Not with any such intensity can the attention of the Executive Chief—a person whose will is not the will to which it appertains to the functionary in question to give execution and effect—be expected to apply to the choice of the person by whom such execution and effect is to be given to the will of the Legislature, as that with which the Legislature itself may naturally be expected to apply itself to that same subject.

2. So great is the aggregate quantity of power proposed to be placed in the hands of the Executive Chief, by that which is proposed to be given to him in relation to the several other departments of the Executive, that unless some special and preponderant reasons were afforded for the attaching to the office this power,—considered in itself, the mere consideration of the danger from excess of power in the same hands, would suffice to indicate, in preference, hands any other than those of the Executive Chief.

3. In pursuit of a conjunct sinister interest, possessed by them in common, the two functionaries—the Executive Chief and his supposed nominee, the Justice Minister—might concur in the commission of depredation or oppression in other shapes, to the prejudice of the people, in an immediate way, or in

immediate way, by opposition and obstruction, instead of obsequiousness, to the declared will of the immediate creatures of the constitutive body—the Legislature.

Instructional. Ratiocinative.

Art. 6. Question. Why not render the Justice Minister dislocable by the Executive Chief, as the several other Ministers are?

Answer. Reasons.

1. Because, to the effectual performance of the functions belonging to the Justice Minister, no such promptitude and exactness of obedience, and complete mutuality of adjustment, is necessary, as in the case of the greater part of the whole number of the departments belonging to these other Ministers: namely, the Army Minister, the Navy Minister, the Preventive Service Minister, the Interior Communication Minister, and the Finance Minister.

2. The functions of the Justice Minister consisting in the watching over the several Judicial functionaries, to see that they do what depends upon them towards securing execution and effect to the ordinances issued, and arrangements made, by the Legislature, it will be more effectual to that purpose if, in case of inaptitude, the remedy by dislocation be immediately in the hands of the persons whose will is thwarted by it, than in the hands of another, although subordinate to, and dislocable by, themselves.

3. The functions of the Justice Minister consisting chiefly of location and eventual dislocation, no decided judgment can so easily be passed by a superordinate, without particular and minute judicial inquiry, as in the case of the functions belonging to the other Ministers.

Section XII.

Dislocable, how.

Enactive. Expositive.

Art. 1. In like manner as the Prime Minister, the Justice Minister is dislocable by that authority, namely, the Legislative, for the giving execution and effect to whose will, he has been located.

Enactive.

Art. 2. Other efficient causes of dislocatedness are the same as in the case of the Members of the Legislature, as per Ch. vi. Section 30, *Dislocable, how*, and in the case of the Prime Minister, as per Ch. viii. Section 9, *Dislocable, how.*

Section XIII.

Securities for appropriate aptitude.

Enactive. Instructional.

Art. 1. In the case of the Justice Minister, securities for appropriate aptitude, *antecedential*, down to the time of his location, as such, are, the several securities—antecedential, concomitant, and ultimate—that have been applying to him, in his anterior situation of Judge *Immediate* and Judge *Appellate*.

Enactive. Instructional.

Art. 2. Securities concomitant, relative to *connexions*. In this particular case, the securities which have place in the case of Judges Immediate and Appellate have no application.

Instructional. Ratiocinative.

Art. 3. But in respect of the Justice Minister's Locative Function, the securities against corruption, which apply to the several situations with reference to which he possesses the locative power, are, it is hoped, abundantly sufficient.

The only function which presents itself as being in any degree open to abuse by corruption, in any shape, is the Judicative. For the exercise of this function, the occasion will naturally be extremely rare: still more rare, accordingly, the abuse of it, having corruption for its cause.

Enactive. Instructional.

Art. 4. Securities ultimately applying are:—

1. Dislocability by the Constitutive authority, as in the case of a Member of the Legislature, the Prime Minister, and every Minister, as per Ch. v. Constitutive, Section 2, *Powers.*

2. So, by the Legislature, spontaneously.

3. So, by the Legislature, on denunciation by the Prime Minister.

4. So, by the Legislature, on denunciation by any Sublegislature.

5. Punibility at the hands of the Legislature; procedure, the same as in the case of a Member of the Legislature, as per Ch. vi. Section 28, *Legislation Penal Judicatory.*

Instructional.

Art. 5. Of all persons in whose instance the power can be conjoined, with the interest, and consequent desire, to offer to the Justice Minister the matter of corruption in any attractive shape, the only one is the *Prime Minister*—the head of the *Administrative Department*, and in it of the *Financial Subdepartment* and *Locator General*, in respect of the high situations thereto belonging. In comparison of this source, corruption from all other sources seems highly improbable.

Instructional. Ratiocinative.

Art. 6. Between these two highest functionaries, to impossibilize all intercourse, were it desirable, would not be possible: no, nor yet to impossibilize all such *corruptive* intercourse. Not so, the throwing in the way of it such difficulties as to render it, if not altogether unexampled, extremely rare. For this purpose, the most promising remedy is composed of two arrangements: one is, the maximizing the distance between the two high func-

tionaries in question: the other is, as often as between them any personal intercourse has place, the maximizing the *notoriety* of it.

It may be asked how, by mere notification, or though it were the complete prevention of personal and immediate intercourse, can corruptive intercourse be prevented, when intercourse by writing remains open, and through intermediate Agents' *personal* intercourse? The answer is—*completely* prevented, certainly *not*: but, in case of delinquency in both of those ways, evidence having place, danger of detection and punishment is thus applied to it.

Instructional.

ART. 7. As to the distance—in the case of the Administrative Department, between the highest Superordinates on the one hand, and highest Subordinates on the other, it cannot be too small. On the other hand, in the case of the Administrative Department and the Judiciary Department, taken together, between the residences of the two chiefs of these two Departments, for the purpose of diminishing the frequency of intercourse, the distance cannot be too great; so as both residences are included within the limits of the metropolis—the place of common resort of all sorts of persons, for all sorts of purposes. These two remedies, in so far as they go, are both of them unexpensive and simple—simple, and free not only from preponderant evil, but from all evil in any shape.

In the case of *distance*, an obstacle opposed to the apprehended intercourse is of the *physical* class, and, as far as they go, physical obstacles are capable of being rendered altogether insurmountable; not so moral obstacles in any case.

As to expense, two residences will not cost any more, if built at the greatest, than if at the smallest distance.

Instructional.

ART. 8. So much as to the unfrequency of the supposed dangerous intercourse. Now as to notoriety: namely, for the purpose of drawing upon it the watchful and tutelary eye—the antiseptic influence—of the Public-Opinion Tribunal.

An institution which presents itself for the purpose is this:—Attach to each of these great functionaries, a *small* one—a *trumpeter*, with his trumpet; and let the trumpet, with its sound, accompany the great functionary to every place without the limit of his own residence: to the individual the distinction conferred will operate in compensation for the suspicion manifested: and as to the suspicion, the imputation, it being cast—not by any one, on another, but by the *law*, on *all*, on no one can it sit heavy, unless in his instance there be more or less *ground* for it.

Instructional. Ratiocinative.

ART. 9. In the case of the Administrative Department the necessity of constant, and thence, at the pleasure of the several functionaries, of familiar and confidential intercourse, has been seen: the necessity, and at the same time the innoxiousness. Widely different is the case as between the Chief of the Administrative Department and the Chief of the Judiciary. The danger here is, lest, with or without intending it, each or either should exercise on the other a corruptive influence, by the consideration of those good things, by the disposal of which each has it in his power to benefit the connexions of the other. Under the influence of such a system of securities as that which has been already seen, whatsoever may be on both parts the disposition, the particular facts necessary to the giving further effect to a sinister interest, on the part of each, could not, it is believed, be easily made known, without frequent and secret intercourse. Under a Monarchy, yes: for *there*, in the hands of the Monarch, at whose completely arbitrary and uncontrolled disposal, is the aggregate of all objects of general desire, what the head of the Judiciary sees is—that in the case of obsequiousness to the will of the Monarch, almost anything which it happens to him to wish for, may drop into his lap; and in case of resistance, nothing: and thus, in that case, of no explanation is there any need. But, wide is the difference in the present case.

Instructional. Ratiocinative.

ART. 10. The opinion and endeavour of the framers and adapters of the institution being thus declared, will afford a sufficient, if not a complete, protection against odium, to all such persons as may feel disposed, on the several occasions, to contribute to the giving execution and effect to it: acting thus as spies, (says the Constitution to them,) you act, as the greatest-happiness principle calls upon you to act: by calling you *spies*, a functionary whose endeavour it is to betray his trust, will neither make his own conduct the better, nor yours the worse.

True it is, that the *trumpet* which accompanies the one head functionary in his visits to the other, cannot accompany his intimates of all sorts, in any visits of theirs, to any intimates of the other, those of the formal sort more particularly; but by this means, though between principal and principal, sinister intercourse cannot be absolutely prevented, it may in no inconsiderable degree be obstructed and rarified: for between no two individuals, for any sinister purpose, can any intercourse, through the medium of any third person, have place, without their putting each of them, himself as well as the other, to a correspondent degree in the *power* of that same object of mutual and sinister confidence: and under a Constitution such as this present one, scarcely can any one sinister benefit, or any number of sinister benefits be found, for the hope or receipt of a functionary in either of those high

would be likely to place himself in a situation thus perilous.

Instructional. Ratiocinative.

Art. 11. As, on the one hand, to the functionary, the factitious dignity may operate as compensation for the thus publicly manifested suspicion; so to the people and their constitution, the security thus afforded may operate in compensation for the evil which has for its instrument this same factitious dignity: where, as under a Monarchy, or an Aristocracy, the factitious dignity is so much pure evil—evil without a particle of benefit—every one is used to it, and therefore no one objects to it: where, as here, it is at any rate, not altogether unattended with compensation, more or less efficient, no one is used to it, and therefore many a one may condemn it.

Upon the whole, not only the probability of its being accepted, but in case of its being accepted, the balance on the side of utility will be in no small degree dependent upon the circumstances of place and time.

Instructional. Exemplificational.

Art. 12. In England, when on *Circuit*, the pair of Judges make their entry into a County Town, they are attended by the Sheriff of the County, and one or two Trumpeters blowing their trumpets. If right *there*, when of no use; can it be wrong when, as *here*, it promises to be of special and important use!*

Section XIV.

Inaugural Declaration.

Enactive.

Art. 1. The Justice Minister will pronounce an appropriate Inaugural Declaration, in the Legislative Chamber, on his entrance into office. This Declaration will be kept in view, whenever he sits in the exercise of his Judicative function, as per Section 4.

Expositive.

Art. 2. For the form of an appropriate Inaugural Declaration, see Ch. xii. Judiciary collectively, Section 31, *Judges', &c., Inaugural Declaration.*

CHAPTER XXV.

Local Headmen.

Preliminary Observations.

For giving effect to the will of Government in all its several main branches—legislative, administrative, judicial, sublegislative, not forgetting the constitutive authority, which, as per Ch. iv., is superordinate to the Government itself—one set of functionaries remains still wanting: functionaries who, with reference to every distinguishable species of political action, shall at all times be as near as possible to the spot. Functionaries of this description are those who, under the name of *Local Headmen*, are here instituted.

To these functionaries the name of *Headmen* is given, because, with the exception of such functionaries, superordinate to them in the scale of office, as may happen to have their residence, permanent or transient, within their territories, they are in such their territories superior in authority to all other persons: and as such, have, for certain purposes specified, the command over them: *local* is the limitative adjunct added, because, though in the logical field their authority is individually more extensive than that of any other single functionary, except the Prime Minister; in the geographical field it is narrower than that of any of their superordinates. In this part of its extent it is indeed a minimum.

This considered, unless the number of these situations is so great that the complication produced by it were productive of an inconvenience worth taking into the account, the only limit which can apply to the number of these seats of authority, will be that which is set by the expense. Suppose the expense out of the question, it would be difficult to say at what mark the number of them could be too great. There will be persons and things needing the occasional exercise of the powers of Government in all places, in considerable numbers: functionaries belonging to the several departments and subdepartments, at any rate, comparatively few: and, not to speak of complication, so the business be but equally well done, the fewer the better. But the fewer, the more distant will be their stations from those spots, whichever they be, from which they are at the greatest distance. Thereupon comes this inconvenience. The greater the distance

* When Blackstone, the author of the Commentaries on the Laws of England, received his Oxford Professorship of English Common Law,—then as now, the ruling functionary, the Vice-Chancellor of the University, (for the *Chancellor*—a sort of Epicurean god—never shows himself,) never quitted the precincts of his own college, without being accompanied and preceded by a functionary styled a *Beadle*, wielding a sort of *sub-sceptre* styled a *mace*. A certain Dr Browne, under the name of *Provost*, head of Queen's College in that University, being then Vice-Chancellor, Blackstone, on his taking possession of his office, sent a message to Browne, demanding some manifest mark of distinction: "Let him," was the answer,—"Let him, whenever he pleases, walk before my Beadle."

In that instance, it need scarce be observed, the factitious dignity was, and is, not only without use, but without effect, other than that of favouring transgression, by the warning thus afforded to it, to keep itself out of the sight of the offended magistrate. Transgression? it may be asked. In such a place, in the day time at any rate, of what transgression is a street ever the scene? Answer.—In countless variety: and by pious ingenuity, every transgression has been converted into an act of perjury.

between the functionary and the spot which, in each instance, is within the local field of his operations, the heavier the burthen of delay and expense by which they will be impeded. At the same time, supposing every diminution effected of the local field of each, which the good of the service can require, and thence every augmentation of the number,—one consideration there is, which may suffice to prevent the number requisite from being so inordinate as at first sight might be apprehended. This is, that the greater the number of the situations, the less will be the quantity of the business requisite to be assigned to each: the less the quantity belonging to each department and subdepartment: and thence the greater the number of the departments and subdepartments of the business of which a share may, without overloading, be allotted to this office.

Of the several sorts of business which, on this occasion, presented themselves as capable of being, without preponderant inconvenience, allotted to the sort of functionary thus denominated, the legislator will now see before him the list. The points which seemed to call for the exercise of his judgment were, in the first place, whether there were any which it was not matter of necessity to consign to somebody; in the next place, whether, in any one of the situations hereinafter brought to view, there was a functionary to whom, with greater prospect of aptitude and convenience, the several functions in question could, in the spots in question, have respectively been intrusted.

In the French system, the sort of functionary whose logical field of authority is most diversified, and at the same time his local field narrowest, is styled *Maire: Maire* from the Latin *Major*, whence also the English *Mayor*. But if, to a functionary to whom are confided the functions that will presently be seen, a name were given, to which a set of ideas, comparatively so narrow, stands associated, a continually recurring train of misconceptions would be the result. As to the English system, no functionary under this name does it present in any spot within the territory, except here and there one, among those which several centuries ago, were covered with buildings. But if, for purposes such as those in question, for a comparatively small aggregate of spots which are covered with buildings, a constantly resident functionary is necessary, still greater will be the need of him in the other inhabited portions of the territory: say, in a word, everywhere else.

For, where the population is dense, much less difficulty and delay will the ordinances of the superordinate functionaries, in the several departments and subdepartments, be exposed to, in respect of execution, than when it is thin: in a word, the facility will be as the density; the difficulty as the thinness.

Moreover, to the office of the functionary called *Mayor*, there are in the English chaos about as many different sets of functions attached as there are towns in which a functionary of this denomination is to be found. There *are*—that is to say, if marked out and fixed by really existing law, there *would be*. But, almost universally, this part of the field of legislation has no other covering than what is composed of a groundwork of imaginary, with here and there, perhaps, a patch of real, that is to say, statute law: this portion of the field, along with others, to so vast an extent, being left in the state of debateable land, for the benefit of corruptionists, in the shape of boroughmongers and lawyers.

Under the English dream of a Constitution—under the English actual form of Government—in this, as in every other part of the field of legislation, the duration of the reign of chaos is destined to be maximized: the duration of chaos, and to that end, the darkness of the den of Cacus.

As to the several ends of Government—that which, in the situation here delineated, they have been thought to require, may be seen in the list of the functions which here follows.

SECTION I.

Fields of Service.

Enactive. Expositive.

ART. 1. By a *Local Headman*, understand a functionary, who,—in each one of the smallest portions of territory, called *Bis-subdistricts*, or *Tris-subdistricts*, into which, by any all-embracing process of division and subdivision the territory of the state is divided,—is, of all public functionaries, whose authority is confined within the limit of that same portion of territory, the *head*.

Enactive.

ART. 2. Of the authority of each Local Headman, the local field is accordingly the *Bis-subdistrict*, or *Tris-subdistrict*, for, and in which he serves.

Enactive.

ART. 3. Of the authority of each Local Headman, the logical field will have been marked out by the several functions allotted to him by competent authority: that is to say, by the Legislature; or, subject to its authority, by the Sublegislature, within the territory—or say local field of which his local field of service is situated.

Instructional. Ratiocinative.

ART. 4. Of the authority of this office, the eventual logical field is coextensive with the whole field of legislation. In the aggregate body of these offices, the Legislature possesses a set of subordinate functionaries, to any of whom, as occasion calls, may be committed to be performed, within their several bis-subdistricts, any function, the exercise

of which could not, by reason of local distance from the seat of authority, be so aptly performed by their respective superordinates—namely, the functionaries presiding over the several departments and subdepartments of the Administration.

Instructional. Ratiocinative.

Art. 5. Of this ultimate link in the chain of territorial division, the object is to minimize the inconvenience resulting from the length and difficulty of the course which the individual may have to take, ere he can reach the *functionary*, and the functionary ere he can reach the *persons* or the *things* on which he has to operate. The degree of facility as to means of communication being given, this inconvenience will be inversely as the multitude of these portions of territory,—their inequality as compared with one another,—the nearness of their approach to the figure of a square,—and the nearness of the abode of the functionary to the centre of the square.

Section II.

Self-suppletive Function.

Enactive.

Art. 1. To a Local Headman, as to a Minister, belongs the *Self-suppletive function*, together with the obligation of keeping it in exercise.

Enactive.

Art. 2. Accordingly, for the carrying on the business without interruption, immediately on being located, the Principal provides a written instrument whereby some person, at his choice, is constituted his *Depute permanent*. The instrument marked with the year, month, and day of the month, is signed by the Principal, and in token of assent by the Depute.

Enactive.

Art. 3. Exemplars, 10: to wit—

1. Kept in the Register office of the Headman's territory, one.
2. Kept by the Locator, one.
3. Kept by the Locatee, one.
4. Transmitted to the office of the Prime Minister, one.
5. Transmitted to the office of the Army Minister, one.
6. Transmitted to the office of the Navy Minister, one.
7. Transmitted to the office of the Preventive Service Minister, one.
8. Transmitted to the office of the Indigence Relief Minister, one.
9. Transmitted to the office of the Foreign Relation Minister, one.
10. Transmitted to the office of the Immediate Judicatory Registrar, one.

Enactive. Expositive.

Art. 4. For the cases in which, to provide for a sudden emergency, instruments whereby *Local Headmen Deputes occasional* are located, may, in unlimited number, be valid without their signature, see Ch. ix. Ministers collectively: Section 6, *Self-suppletive function.*

Enactive. Ratiocinative.

Art. 5. For damage produced to the service for want of the due exercise of this function, the functionary is punitionally, as well as satisfactionally and dislocationally responsible. By acceptance of the situation, he contracts for the apt and sufficient performance of the duties attached to it.

Enactive.

Art. 6. Locable in the situation of *Local Headman's Depute permanent*, are all those, and those only, who are so, in that of Local Headman principal, as per Section 25, *Locable who.*

Enactive.

Art. 7. Dislocable at any time is the Local Headman Depute by the Principal, as likewise by any of the authorities, by which the Principal is dislocable.

Section III.

General-assistance Function.

Enactive. Expositive.

Art. 1. In the exercise of this function, at the call of the Prime Minister, or of any one of the Ministers, or of the Judge of any Immediate Judicatory, the Local Headman does within his territory what depends on him, towards giving execution and effect to all ordinances, mandates, or orders, in relation to which, in conformity to the will of the Legislature, it may happen to them to regard the business of their respective departments and subdepartments, as standing in need of such his assistance: and this whether for the purpose of securing *execution* and *effect*, or for the purpose of minimizing the amount of *delay*, *vexation*, and *expense*.

I. Legislature-aiding Functions.

Section IV.

Presidential Function.

Expositive. Enactive.

Art. 1. In the exercise of this function, at all meetings of the inhabitants of his territory, held for the exercise of any public function,—the Local Headman takes the chair of course; and, subject to the authority of the majority present, conducts the proceedings.

Enactive. Instructional.

Art. 2. But to no such meeting is his pre-

sence, either in person or by deputy, in such sort essential, as to render invalid any proceedings at which a majority of the persons entitled to vote are present. They are free, if they think fit, to elect any other person President.

SECTION V.

Convocative Function.

Expositive. Enactive.

ART. 1. In the exercise of this function, the Local Headman convokes the inhabitants of his territory, as occasion calls, to meet together for public purposes.

Enactive. Instructional.

ART. 2. What number of persons, joining in a requisition for this purpose, shall, on each occasion, be sufficient to authorize the exercise of this function,—and what number sufficient to render it obligatory,—are points of local and temporary consideration, which, under the direction of the Legislature, will be settled by the *Sublegislature* of the district in which the Local Headman's territory is comprised.

II. ADMINISTRATION-AIDING FUNCTIONS.

SECTION VI.

Stipendiary Army-controlling Function.

Expositive. Enactive.

ART. 1. In the exercise of this function, he takes cognizance of the exercise given to all such powers, to which (under Ch. x. DEFENSIVE FORCE, Section 12, *Powers of Military as to Non-military*) it happens to be exercised by any stipendiary Army functionary, on the ground of *military necessity*.

Enactive.

ART. 2. For this purpose, subject to the control of the Immediate Judicatory, he has, on every occasion, under his command, the whole of the Radical Military Force stationed within his territory; Land Service and Water Service (if any) included.

Enactive. Instructional.

ART. 3. In Ch. x. DEFENSIVE FORCE, Section 12, the principle has been advanced, stating the inaptitude of all inflexible prohibitive bars to the abuse of military power, and the consequent necessity of making the most, of such bars as it is of the nature of the Public-Opinion Tribunal to oppose, to wit, by maximizing and perpetuating the notoriety of whatsoever exercise is given to the Stipendiary Force, on the ground of necessity.

In the political situation here established, may be seen the particular means of execution employable for giving application and effect to this principle. In every bis-subdistrict, the military functionary will find a non-military functionary capable of taking, and under the obligation of taking, cognizance of the exercise given to the extraordinary military power: and this non-military functionary established in the command of such a force—the Radical force of the Bis-subdistrict—as will be sufficient to overpower any force that can be under the command of a Stipendiary officer, whose rank is not elevated by some grades above the lowest. On an occasion of this sort, whatsoever is done by the Stipendiary functionary, the Local Headman inspects and keeps within bounds, and the Local Registrar records it. The smaller the territory, the nearer at hand, on every such occasion, will the Headman of it be: in no part of the territory can a military commander set a foot, without being in immediate expectation of seeing this controlling functionary at his elbow.

SECTION VII.

Stipendiary Navy-controlling Function.

Expositive. Enactive.

ART. 1. In the exercise of this function, the Local Headman conducts himself, as per Section 6, Arts. 1, 2, 3, in the exercise of the *Stipendiary Army-controlling Function.*

Instructional.

ART. 2. Generally speaking, demand for the exercise of this power will not, it is obvious, be so frequently presented by the sea as by the land branch of the service. But how remote soever it may be, from the nearest part of the sea, scarcely can there be a Bis-subdistrict in which a demand for the exercise of it may not have place. Suppose, for example, a Navy officer, with a portion of his crew, traversing the country in pursuit of a *deserter*, or a body of *deserters*, from that branch of the service, and knowing or suspecting that the object of their search has taken refuge in a certain house. Entry being refused, shall they, by law, have power to employ force for the obtainment of it? How useful it might be, that their proceedings, whatever they were, should have for witness and moderator this local functionary, is sufficiently manifest.

SECTION VIII.

Damage-preventive Function.

Expositive. Enactive.

ART. 1. To this function the Local Headman gives exercise by appropriate measures, taken for the prevention of damage in any of the cases following:—

Damage by *Calamity* or *Casualty*. For examples of the modes in which damage by *calamity* is liable to have place, see Ch. xi. MINISTERS SEVERALLY, Section 5, *Preventive Service*

Minister. By *casualty*, understand *calamity* on a smaller scale.

Prevention has place, 1. where, on appearance of danger, *all* damage is prevented; 2. where, after some sustained, all *ulterior* damage is prevented; 3. where damage is prevented in part only, not in the whole. Prevention of ulterior may be either temporary only, or final.

Expositive.

Art. 2. Of the cases in which, by the timely interposition of authority, damage may be prevented, examples are as follows:—

I. *Calamity—Inundation*. Preventive operations:—1. Diverting the course of the water, by operations performed on the lands of proprietors or occupants not consenting; and this whether it be by absence or reluctance that the want of consent is produced. 2. Application made of the manual labour of hands, over and above such as the persons immediately interested are able or willing to procure and employ within the time.

Expositive.

Art. 3. II. *Calamity—Conflagration*. Preventive operations:—Application of extra hands, as above. 1. In case of a forest or tract of dry grass on fire, preservation of a more or less remote tract, by gaps made or enlarged in the masses of combustible matter, by cutting down and removal of the trees or grass. 2. So, in a town, by the pulling down of intermediate buildings, where water in sufficient quantity cannot be had in time.

Expositive.

Art. 4. Damage by *Absentation*: that is to say, for want of proprietary care. Examples of cases are as follows:—

1. The Proprietor not known.

2. The Proprietor absent from the spot, and no other individual at hand, having authority to take charge.

3. An individual, having charge, by infirmity of body or mind, incapacitated from adequate performance.

Expositive.

Art. 5. Examples of subject matters and modes of damage are as follows:—

1. Corn, grass, fruit, roots, or other agricultural products, perishing for want of gathering in.

2. Agricultural live-stock perishing, or wandering out of reach, for want of sustenance.

3. Perishable dead stock in trade, perishing for want of appropriate care or sale.

Enactive. Expositive.

Art. 6. Of the *Remedies* applicable by this functionary, examples are as follows:—

I. In the case of *Calamity*.

1. Application of the number of hands requisite. For this purpose, in subordination to the *Preventive Service Minister*, the Local Headman has command over the resident armed force in his territory, in like manner as per Section 6, *Stipendiary Army-controlling Function*.

2. Performance of the preventive operations necessary, as per Arts. 2, 3. In so doing, he will make recordation, as in the case of *Military Necessity*, as per Ch. x. Defensive Force, Section 12, *Powers of Military as to Non-military*.

Enactive.

Art. 7. II. So, in the case of *Delinquency*.

Enactive. Expositive.

Art. 8. III. In the case of *Absentation*.

1. Locating a person as temporary *curator*, with appropriate temporary powers and responsibility, as in *post-obit* cases, as per Ch. xxvi. Local Registrars, Section 10, *Post-obit-administration-granting Function*: or locating *divers* persons as *conjunct* curators.

Enactive.

Art. 9. Meantime, for enabling the proprietor to take the appropriate charge of his own property, the Headman will employ such means of communicating with him, as the nature of the case affords.

Enactive.

Art. 10. In all these cases, of his proceedings in the exercise of this his function, he will, by the instrumentality of his Registrar, as per Ch. xxvi., cause make recordation. Of the record, exemplars will, by the Local Registrar, be disposed of as follows:—

1. Kept in the *Registrar's Office*, one.

2. Transmitted to the *Immediate Judicatory*, by the promptest conveyance, one.

3. Transmitted to the *Preventive Service Minister*, one.

4. Transmitted to the *Justice Minister*, one.

5. Kept by the *Local Headman*, for his own use, one.

Instructional.

Art. 11. The *Preventive Service* Subdepartment being, as per Ch. xi. Ministers severally, Section 5, of an amphibious character, belonging partly to the *Administrative*, partly to the *Judiciary* Department, such is the character of the services performed, in the exercise of these functions, by the *Local Headman*.

Section IX.

Eleemosynary Function.

Expositive. Enactive.

Art. 1. *Eleemosynary* or say *Indigence-relief-aiding function*. In the exercise of this function, under the direction of the *Indigence Relief Minister*, the Local Headman gives,

upon occasion, within his territory, execution and effect to all such ordinances as shall have emaned, either from the Legislature or the Sublegislature, in relation to the business of the *Indigence Relief Subdepartment.*

SECTION X.

Hospitality-exercising Function.

Expositive. Enactive.

ART. 1. In the exercise of this function, under the direction of the Foreign Relation Minister, he provides, as occasion calls, for the hospitable and suitable reception of the Agents of foreign powers, in their passage through, or temporary abode in, his territory.

III. JUDICATURE-AIDING FUNCTIONS.

SECTION XI.

Sedative Function.

Expositive. Enactive.

ART. 1. In the *ordinary* exercise of this function, for his security against disturbance in the exercise of his other functions, he employs, in case of necessity, those powers which, for the like purpose, as per Ch. xii. JUDICIARY COLLECTIVELY, Section 11, *Sedative function,* are given to the Judge.

Expositive. Enactive.

ART. 2. In the *extraordinary* exercise of this function, he applies it to the purpose of effecting the cessation of any such casual riot as may have taken place in his territory. Call it in this case his *Riot-quelling function.*

Expositive.

ART. 3. By a *riot,* understand any course of operation, in which persons, [two] or more, with or without concert, act in the continuous exercise of physical violence, on persons or things one or more, or in producing annoyance to the neighbourhood by noise, or threatening language, or deportment.

Enactive. Instructional.

ART. 4. For the purposes in this section mentioned, he has under his command the whole of the Radical military force belonging to his territory; and on each occasion employs such part as in his judgment is in quality best adapted to the purpose, and in quantity sufficient, without being superfluous.

Enactive.

ART. 5. When once begun in his territory, the exercise of the sedative function may be continued by him, in any of the contiguous, and so in any ulterior, Local Headman's territory, until the riot has ceased.

Enactive.

ART. 6. On whatsoever occasion the sedative function, ordinarily or extraordinarily, is, has been, or continues to be, exercised, the Headman will, by the earliest opportunity, transmit to the Immediate Judicatory notice thereof: also, then or thereafter, an exemplar of the record of whatever passed: likewise all such persons and things, if any, as he has caused to be *prehended.*

SECTION XII.

Justice-aiding Function.

Expositive. Enactive.

ART. 1. In the exercise of this function, the Local Headman gives aid to justice in the cases following:—

1. Where, from the Judge of his territory, he receives order so to do.

2. Where, on information from any other person, it appears to him that such aid is needed, or may be of preponderant use.

3. Where, upon observation made by himself of the matter of fact in question, it appears to him that such aid is needed, or as above may be of use.

Expositive.

ART. 2. By *giving aid to justice,* understand the contributing to give execution and effect to some decree or mandate, which has been, or, as appears to him, would have been, issued by the Judge, had the circumstances of the case been known to him.

SECTION XIII.

Uncommissioned prehension-approving Function.

Expositive. Enactive.

ART. 1. In case of an act of prehension, exercised on a person or a thing, by command or allowance of law, on the ground of necessity, by an individual not specially commissioned, for the stoppage or prevention of a criminal offence, or for the placing the offender or supposed offender, under the physical power of the Judge,—the prehender, if no functionary belonging to the *Judicial* or *Preventive* service be nearer at hand, will, if the service admits, repair to the Local Headman of the territory, and give him information respecting the facts and circumstances. The Headman will thereupon either leave the individual or other subject matter prehended in charge of the prehender, or take charge thereof, in conjunction with him, or without him, as the law in that behalf shall have directed.

Enactive. Instructional.

ART. 2. At the request of the *Prehender,* the Headman may moreover, if he thinks fit, deliver to him an instrument, containing his approval of the Prehender's proceedings, in so far as, by such evidence as hath come before him, he is enabled to judge. Name of the in-

strument, *Local Headman's provisional prehension-approving certificate.*

Effects and use of this *certificate*:—In case of suit brought against the prehender on the ground of such his proceedings, this certificate may be adduced by him in the character of justificative evidence, subject to overbalancement by counter interrogation or counter evidence.

Expositive. Instructional. Ratiocinative.

Art. 3. This function and the two preceding ones, are obviously very near of kin to one another. In the *nature of the occasion*, on which it may happen to them to be called into exercise, lies almost the only difference. To the *sedative function*, it will be a chance or casual commotion produced by an occurrence, capable of happening every day in every year, but which from hundred years to hundred years, may never happen. In the case of the *justice-aiding function*, an order from the Judge will naturally in the case of the individual obligation, be an efficient cause: but unless the duty, together with the power, were extended to those cases, in which an individual order from the Judge was by the nature of the case impossibilized, the provision made for the support of justice, would manifestly be lame and insufficient. In the case of the *uncommissioned prehension-approving function*, the efficient cause is, an application made by an individual, who, time not admitting of its being made to the Judge, for an individual authorization, takes upon him provisionally, (under the assurance of obtaining it, as soon as time admits,) to act in aid of justice, in pursuance of the general authority supposed to have been given by the law.

Instructional. Exemplificational.

Art. 4. In English practice, a man who sees another committing a felony, may apprehend him and carry him before a Justice of the Peace. But a felony, what is it? All it signifies, and that but ambiguously, is the punishment, not the offence. True it is, that under this denomination, some of the most mischievous of crimes, such as murder, housebreaking by night, and highway robbery, would, by most men, probably be regarded as included. But between depredations felonious and depredations unfelonious, endless and generally uncognoscible are the distinctions.

Instructional. Exemplificational.

Art. 5. Suppose, however, a person by whom the necessary knowledge is possessed, and the occasion having place, suppose the act of prehension to have place in consequence. What is to be done with the supposed felon? Within reachable distance, perhaps there is no Justice of the Peace, or he is out of the way, or he chooses not to act, if there should be anything else which it would be more amusing or more agreeable to him to do: for, performance of functions is not really obligatory in the case of these functionaries: with them, it is all power, and no obligation.

Instructional. Exemplificational.

Art. 6. Under this Code, the Headman, if applied to, would not dare to make sport of law and justice. That day or the next, the complainant would repair to the Immediate Judicatory, the delinquent would be called before it, and obliged to make compensation for loss of time, or any other injury that had resulted from his neglect. In England, for any such complaint, a complainant would have to pay near a £100 in costs, for the attempt, before trial, and would assuredly obtain no redress. Neither would any punishment be inflicted on the delinquent, but on proof of corruption, as if without it no mischievous misconduct could have place. But then, gentlemen who serve their king and country in this capacity for nothing, are not to be harassed by frivolous accusations.

Section XIV.

Judiciary power-controlling Function.

Enactive. Instructional.

Art. 1. In the exercise of this function,—if, by any *interessee*, (on his responsibility in case of groundless or wanton application,) information has been given to the Local Headman of the territory, of any physical act of judicial power, exercised on any person or thing, for the purpose, real or pretended, of giving execution and effect to any decree of the Judge, —in such case, if, for stoppage or prevention of any abuse made of the power so exercised, or about to be exercised, his attendance on the spot is applied for, he will, if he sees need or preponderant use, attend accordingly: to wit, in person, or, if unable in person, by Depute.

Enactive. Expositive.

Art. 2. Of such attendance the object will be—not the frustrating in any way any intention of the Judge, but merely the furnishing upon occasion the most trustworthy evidence of it: if, however, it appears to him, that by any subordinate of the Judge, on pretence or under the belief of giving effect, obstruction is really opposed to the will of the superordinate, he will, on his responsibility, take such course as the circumstances of the case appear to him to require, for giving effect to it, giving always, by the earliest opportunity, information thereof to the Judge.

Expositive.

Art. 3. Of the physical acts of judiciary power thus liable to need control, examples are as follows:—

1. Prehension, and consequent detention, or transmission exercised on a *person*.

2. Prehension and consequent detention, or transmission, exercised on a thing *moveable*.

3. Prehension and detention of a thing *immoveable*.

4. Search made, whether on land, or in a building, navigable vessel, or other receptacle, for the purpose, real or pretended, of prehension or inspection in aid of justice.

SECTION XV.

Subjudiciary topographical Function.

Enactive. Expositive.

ART. 1. In the exercise of this function, the Local Headman takes cognizance of all such of the judiciary proceedings, here following, as have place within his territory, and, by the instrumentality of the Local Headman's Registrar, causes recordation to be made of the results.

1. Every *partition* made of a portion of land, or erection made on land, or under-ground work, within his territory, into shares, in favour of that same number of proprietors, or sets of proprietors, or *interessees*.

2. Every *union* made of any number of portions of land, or erections made on land, or under-ground work, within his territory, for any special purpose.

3. Every *actual transfer* made of any portion of land, or erection on land, or under-ground work, within his territory, from one proprietor or interessee to another; and this, whether the change be to take place during the life of all the interessees, or not till after, and in consequence of, the death of the proprietor or proprietors, interessee, or interessees in possession.

4. Every *eventual transfer* made of any portion of such proprietary subject: for example, in the way of mortgage, or say *land-pledge*.

5. Every judicial decree, by which *boundaries* are established between one such proprietary subject and another.

6. Every judicial decree, by which, as between land belonging to one proprietor, or set of proprietors, or interessees, and land belonging to another proprietor, or set of proprietors, or interessees, the course to be taken by a stream of *water*, or the uses to be made of it, is determined.

Enactive.

ART. 2. Of every instrument, by which any one of the above-mentioned operations is performed, together with all appropriate delineations thereto annexed, exemplars will, by the care of the Local Headman, be made and disposed of as follows:—

1. Delivered to each party, or set of joint parties, one.

2. Delivered to the Local Headman's Registrar, and kept among the records of his office, one.

Enactive.

ART. 3. 3. Also of every judicial decree, as above, of the Immediate Judicatories, delivered to the Registrar to be kept in his office, one.

4. So in case of appeal to the Registrar of the Appellate Judicatory, one.

SECTION XVI.

Subjudiciary Venditive Function.

Enactive. Expositive.

ART. 1. When, for giving execution and effect to a judicial decree, a mass of property is to be sold,—the Local Headman of the territory is the functionary, to whom, exceptions excepted, the function of effecting the sale, and placing the produce at the disposal of the Judicatory, will be committed.

Enactive.

ART. 2. Exceptions excepted, the mode of sale will be by auction.

Instructional.

ART. 3. To establish exceptions, should any be deemed needful, will be among the cares of the Legislature, and the Sublegislature, in the adjustment of the details of the Non-penal, Penal, and Procedure codes.

Instructional.

ART. 4. Whether it be by selection or by auction, the moral aptitude of the functionary will, on these occasions, stand frequently exposed to formidable temptation. To preserve it inviolate, will be among the special cares of the superordinate authorities.

Instructional.

ART. 5. The source of temptation is—by sale at undervalue, profit to the directing functionary, or what comes to the same thing, a person connected with him by some special tie of interest, self-regarding or sympathetic: profit, to wit, by the difference between the actual price received, and the price which, but for the sinister design in question, would, or might have been received.

Enactive. Instructional.

ART. 6. Preventives and preservatives, as in other cases of temptation, so in this—responsibility satisfactional, punitional, and dislocational: and, for execution and effect, publicity throughout the whole of the process, maximized: to this publicity, the sole limit should be that which may be found set, by the conjunct consideration of delay, vexation, and expense.

SECTION XVII.

Communication-aiding Function.

Enactive. Expositive.

ART. 1. In the exercise of this function, according to such means as shall by law have been placed at his disposal,—the Local Head-

man affords the requisite supply to any such deficiency, as the service of any Administration subdepartment may at any time chance to labour under, in respect of the means of communication between place and place. As to these, see Ch. xi. Ministers severally, Section 6, *Interior Communication Minister.*

Section XVIII.

Beneficent-mediation Function.

Enactive.

Art. 1. In the exercise of this function,—for prevention of litigation, on application made to him, the Local Headman, in so far as he sees good, will apply his good offices to the reconciliation of *family differences* within his territory.

Enactive.

Art. 2. For the non-exercise of this function, he is not compensationally, punitionally, or dislocationally responsible: only, for any abuse committed of the trust thus reposed in him:—for his reward, he will have the love, respect, and self-satisfaction, which will be the natural fruits of the kind and meritorious exercise of it.

Expositive.

Art. 3. Of family differences, or say *disagreements*, examples are as follows:—

1. Differences between *husband* and *wife*.
2. Differences between *parent* and *child*.
3. Differences between *brother* and *brother*, *sister* and *sister*, or *brother* and *sister*, inhabiting the same house, and without a common parent.
4. Differences between any two other *near relatives*, inhabiting the same household: especially if without the near vicinity of any common superordinate in the order of genealogy.
5. Differences between *employer* and *helper*, in any business, especially if inhabiting the same household.

Enactive. Instructional.

Art. 4. The application made to him may be made by either party separately, or, as the case may be, by both conjunctly: if conjunctly so much the better.

Instructional.

Art. 5. In the case of husband and wife, and in other cases, where the parties are of different sexes, he will do well to call in, as his assistant, a person of the female sex, wife or widow, and past the age of child-bearing.

Instructional.

Art. 6. Where both, or all parties are of the female sex, at the desire of any one, he may do well to call in, or refer them from himself to some person of the female sex, circumstanced as per Art. 5.

Instructional.

Art. 7. At the desire of any party, if he sees reason, he will call in the Registrar; but the Registrar is not obligationally responsible, in case of non-compliance.

Instructional.

Art. 8. At the desire of any party, unless he sees special reason to the contrary, he will render the hearing secret. For causes of secrecy, see Ch. xii. Judiciary collectively, Section 14, *Publicity, &c.*, and Procedure Code, Ch. viii. Judicial application, Section 15, *Proceedings when secret.*

Instructional.

Art. 9. If he sees reason, he will inform the parties what, in the case before him, will, in his opinion, be likely to be eventually done by the Judge.

Instructional. Enactive.

Art. 10. For any of the above purposes, on application made by any inhabitant of his territory, he may call in any other inhabitant thereof to a mutual attendance. A person so called in, is not obligationally responsible for non-compliance. But, at the instance of the Headman, the Registrar will make entry of such non-compliance; and, at any time after commencement of a suit between the parties, at the desire of the applicant, send certificate thereof to the Judicatory.

Instructional. Ratiocinative.

Art. 11. Of the sort of incompletely-empowered Judicatory, called a *Conciliation Court*, invented in Denmark, and in principle applied in some measure in Buonaparte's and other codes, the principle has thus received a proportionably extensive approbation. Not that, under the here proposed system, suppose it in any considerable degree to answer its intended purposes, there can be near so great a demand for a judicatory of this sort, as under the system in which it originated, or even under any in which it has been employed. On the other hand, the extent given to the principle being maximized, cannot but be much greater than in any of those other systems: for, in the enormous amount of the mass of factitious delay, expense, and vexation, created, or left and confirmed by those Codes, is to be found the sole warrant for the institution of a Judicatory, unprovided with the power of giving execution to its own decrees. As to this matter, see Ch. xv. Section 5, *Referees deputable.*

Instructional. Ratiocinative.

Art. 12. As to danger of abuse,—notwithstanding any supposeable deficiency of trustworthiness in the situation of the functionary here in question, as compared with that of the Judge Immediate,—little ground of apprehension will, it is believed, be found. No coercive

power is in this case given; nor yet, as in the case of the *Danish Conciliation Courts*, are parties compelled to betake themselves to this uncoercive judicatory, in their way to the coercive one. Power of compelling *compensation* not being in this case given to the functionary, the influence of any such *opinion* as he may see reason to declare, will, in each individual instance, be correspondent to the conception entertained by the parties, as to his appropriate aptitude; and as the aggregate mass of useful information in the territory in question increases, this aptitude will naturally receive correspondent increase.

Instructional. Ratiocinative.

ART. 13. Note, that, in this case, as to every assertion, by whomsoever on this occasion made, the same securities against falsehood must be given, as in any other case: else, as in English practice, the omission of those securities will operate as a *license* to, and a *bounty* upon, *mendacity*. But no imperative power, either for compelling the appearance of persons or things, in the character of sources of evidence,—or for compelling responsion for the purpose of evidence, at the hands either of strangers or of parties,—must be conferred: for, if yes, the power would be—not this comparatively slight and limited power, but, in so far as regards evidence, the ordinary and complete power of judicature.

SECTION XIX.

Beneficent-information Function.

Enactive. Instructional.

ART. 1. In the exercise of this function, on application made to him, the Local Headman affords useful information and advice, on various occasions, to the otherwise helpless, in so far as the means in his power extend, and his employable time admits.

Instructional. Expositive.

ART. 2. Of these occasions, examples are as follows:—

1. For subsistence the applicant has need of employment, and though *able* to perform work, knows not where, or how to obtain it. If *unable*, his case belongs to the *Indigence Relief Minister's Subdepartment*, as per Ch. xi. Section 7.

2. From the estate of a person lately deceased, or become insolvent, in a distant Bis-subdistrict, or in a foreign country, money is believed by the applicant to be due to him; for example, on the ground of natural relationship or debt: his wish is to know by what means, if any, he may take the best adapted course for the obtaining of it.

3. On an account, to which he was not privy, by the decease of a relative, money is become due to him from government, and his wish is to know in what manner to make application and proof.

SECTION XX.

Travelling-disputes-settling Function.

Enactive.

ART. 1. In the exercise of this function, in subordination to the Immediate Judicatory, with the advice and assistance of his Registrar, the Local Headman employs his endeavours in settling *travelling disputes;* thereby, in so far as on him depends, giving execution and effect to the *Traveller's Subcode.*

Expositive.

ART. 2. Of travelling disputes, examples are the following:—

1. Disputes between a traveller and a conductor of a public vehicle, respecting the quantum to be paid.

2. So, respecting loss of, or damage to, traveller's effects.

3. So, respecting damage alleged by the conductor to have been done to the vehicle, or the effects therein, or the beasts of draught, by a passenger.

4. The like as between a traveller and an innkeeper.

5. Disputes respecting the accommodation afforded in the vehicle, or the inn, as between traveller and traveller.

Ratiocinative.

ART. 3. Question. Of the here assumed demand, for a particular *Subcode*, bearing relation to, and denominated from, persons thus occupied, what is the efficient cause?

Answer. 1. The extreme need of the maximum of promptitude, in respect of whatsoever remedy is desired to be applied to the evils to which this occupation is liable to give birth. Of this remedy, the principal, if not sole peculiarity, will be—the nature of the Judicatory to which the power of making application of it shall be allotted. For—the *persons* who are they, who, in this instance, require to be taken for subjects of the regulation? They are persons of all classes, without exception: and so in regard to the wrongs which, on this occasion, may require to be repressed, and the correspondent rights which may thus require to be carried into effect. Not that as to *wrongs* and *rights*, the classes that may require provision are in fact so absolutely boundless, as in regard to *persons:* still, however, to the purpose of provision by regulation, they may, without practical error, be regarded as such.

Ratiocinative.

ART. 4. 2. This circumstance it is that brings the case within the field of the Constitutional Code. Confine the application of the remedy, in the first instance, to the ordinary Judicatories, the distance between the scene of dispute and the seat of Judicature considered,

the remedy would in most cases remain unapplied; or if applied, be more afflictive than the disorder. Unless, on an occasion of this sort, the power of stopping the traveller be allowed to persons exposed to suffer wrongs at his hands, the power of doing wrong, in all manner of shapes, is given to every individual who, on the spot in question, is personally unknown: and, over the whole of the globe, a comparatively small portion excepted, in this case are all individuals whatsoever.

Ratiocinative.

Art. 5. Yet, if you do grant this power to the several classes of persons by whom the protection in question is needed, say in particular *innkeepers* and *conductors of vehicles*, you put into their hands the faculty of practising extortion and oppression, at the charge of an unbounded multitude, who, in no small proportion, will be in a helpless state.

Ratiocinative.

Art. 6. Such is the dilemma: what, then, is the option which it leaves? *Answer.* Either to leave the wrongs in question without remedy, or to give the application of the remedy to a Judicatory, much nearer at hand than, in general, will be the ordinary Judicatory: to give it, in a word, to a Judicatory, of which the *Local Headman*, with or without the assistance of his Registrar, is constituted Judge: for, no other course so unexceptionable, can the nature of the case admit of: no other Judicatory does the present Code afford; no Judicatory which can so effectually meet the evil, can any Code afford. Yet even thus, against the traveller, no remedy can be endeavoured to be applied, but evil, to the magnitude of which scarcely can any limits be assigned, is liable to be produced: a man, whose preservation from ruin depends upon his meeting with a certain *person*, or having under his eye a certain aggregate of *things:* or, on his arrival at a certain *place*, within a certain *time*, is consigned to ruin, if, by the means in question, or any others, he is prevented from arriving at the place in question within that time. To exclude this species of evil is therefore impossible: all that can be done, is to minimize the amount of it.

Exemplificational. Ratiocinative.

Art. 7. Under existing systems, not only inadequate in the extreme, but teeming with inconsistency, is the provision made against evil in this shape. By a person travelling, suppose in a carriage in which he is passenger, damage to a certain amount is done to the carriage, to the cattle, or to the inn at which he stops. From the damage done, suppose him to obtain or seek profit, as where the thing in question is stolen by him, or endeavoured to be stolen, what, in this case, is the consequence? He is liable to be taken before the ordinary Judicatory, whatever be the distance, there to receive a punishment, the amount of which is screwed up, without scruple, to a degree little short of the highest. Suppose the thing, on the other hand, not merely as above, transferred from one person to another, but *destroyed*, and thus lost to everybody: in this case, be the wrong ever so great, whatsoever be his responsibility as *declared* by the law, if his person is unknown, or he chooses rather to go out of, than stay within, reach of the power of the Judge, such *declared*, is not accompanied by any *actual* responsibility: only to what is called a *civil suit* does he stand exposed, and by *that* he is left at full liberty to make his escape. Yet to the loser of the thing, how is the loss of it rendered the lighter by its being destroyed? better it would be for him that it were stolen: for then would he have a chance more or less considerable of getting it back again; whereas, no such chance has he if it be destroyed. True it is, that, in respect of the demand for punishment, there may be a difference between the two cases: but in respect of the demand for compensation, there can be none.

Instructional. Ratiocinative.

Art. 8. Of any remedy of which the Legislature may feel disposed to make the *Local Headman* the instrument, the efficiency will naturally depend upon the degree of confidence which it may regard itself as warranted in reposing in this functionary. To every or any person regarding himself as injured in any of these ways, shall the power of prehending the supposed wrong-doer, and adducing him before the Local Headman, be given? If yes, what shall be the function exercised on the occasion by this functionary? The *opinative* only? or, in addition to it, the sole surely effectual function the *imperative?* Then, as to the Registrar having, in this case as in others, cognizance of whatsoever the Headman does, or endeavours to do,—may it not be advisable, in consideration of his longer experience, and probable superiority in respect of appropriate intellectual aptitude, to confer on him in this case, with relation to the imperative decree of the Headman, an effectual negative? or, in case of the Headman's refusing, or purposely declining to act, the imperative function itself?

Instructional. Ratiocinative.

Art. 9. Note that, on this occasion, the less the confidence reposed by the Legislature in these chosen and effectually responsible functionaries, watched as they will be by the section of the Public-Opinion Tribunal, by which they will be environed,—the greater is the confidence it will thereby repose in persons of all descriptions, of whom *collectively* nothing is *known*, except that as individuals they are *unknown:* nor let it be forgotten that, to the here supposed, as to any other Judicatory, no proposed *pursuer* can *adduce* a proposed *defendant*, without at the same time *adducing*

himself, and thus subjecting himself to whatsoever penal and other burthensome consequences the law has attached to any such offence, as on the occasion it may have happened to him to commit.

SECTION XXI.

Hospitable Post-obituary Function.

Enactive. Expositive.

ART. 1. In the exercise of this function, in the case where, within the Local Headman's territory, a foreigner or other person dies, or is found dead, and no other person being within reach, in whom the disposal of the body, and the temporary disposal of the effects of the deceased, can with propriety be made to devolve, as per Ch. xxvi. LOCAL REGISTRARS, Section 10, the Headman takes upon himself that same trust: in so doing, he gives, in so far as on him depends, execution and effect to the correspondent provisions in the *Stranger's Subcode.*

Instructional. Ratiocinative.

ART. 2. In the exercise of the *post-obit-administration-granting* function, allotted as per Ch. xxvi. Section 10, to the *Local Registrar*, the deceased being supposed a native, or other resident inhabitant of the territory of the state, there will in general be some individual in whom this trust may be, and ought to be, reposed. But, in the case *here* in question, no such person has place. The consequence is—that, either the trust must devolve upon some public functionary, or the disposal of the body, and such effects as the deceased had in his possession, will be abandoned to chance and depredation.

SECTION XXII.

Term of Service.

Enactive. Ratiocinative.

ART. 1. Of each Local Headman, the term of service is the same as that of a Member of the Legislature, as per Ch. vi. LEGISLATURE, Section 22, *Term of Service*, and Section 24, *Continuation Committee:* in such sort, that the Electors may at all times have their choice of divers persons, in the instance of each of whom degrees of aptitude have been manifested by experience.

SECTION XXIII.

Attendance.

Enactive.

ART. 1. Of a Local Headman, the attendance is governed by the same rules as that of the Judge, as per Ch. xii. JUDICIARY COLLECTIVELY, Section 25, *Judges' Attendance.*

SECTION XXIV.

Remuneration.

Enactive.

ART. 1. Of the Local Headman of each territory, the pay is [ ]. Received from unwilling hands, ulterior emolument is extortion: from willing ones, corruption.

Enactive.

ART. 2. As in the case of a Minister, so in this, by the pecuniary competition will be determined, in what shape, and to what amount, deductions, if any, from the above-mentioned pay, shall be made.

SECTION XXV.

Locable who.

Enactive.

ART. 1. *Till* the arrival of the Official Aptitude consummation period, as per Ch. ix. MINISTERS COLLECTIVELY, Section 16, *Locable who*, any person is locable as Headman whom a majority of the appropriate electors think fit to locate.

Enactive.

ART. 2. *After* the arrival of the consummation period, no person is locable until his name has been entered on the *General Locable List:* if, of the persons entered on that list, there be any one willing thus to serve.

SECTION XXVI.

Located how.

Enactive.

ART. 1. Antecedently to the election, candidates will have given in their names, together with their several *deduction offers*, relation had to the standard pay, as above, according to the *pecuniary competition process*, as per Ch. ix. MINISTERS COLLECTIVELY, Section 16, *Locable who:* out of these bidders, together with such candidates, if any, by whom no bidding has been made, the Electors will have to choose.

SECTION XXVII.

Dislocable how.

Enactive.

ART. 1. A Local Headman is dislocable, by any one of the several Ministers, to the exercise of whose function it is hereby made his duty to give aid, as per Section 3, *General-assistance Function.*

Enactive.

ART. 2. So, subject to appeal, by the Im-

mediate Judge of his territory: so by the Prime Minister, the Legislature, or the Constitutive authority; namely, in this case, by that branch of it which is composed of the electors of the Subdistrict.

Section XXVIII.

Reports—publicity.

Enactive.

Art. 1. Under the name of the *Report Chamber*, a chamber in the Local Headman's Office will be allotted to the purpose of maximizing publicity in regard to the matter of the several Reports concerning Deaths, Marriages, and Births.

Enactive.

Art. 2. Tables, to wit the originals, exhibiting the matter under the several heads, will be kept hung up for public inspection.

Enactive. Expositive.

Art. 3. In regard to each, the events that occurred during one week will constitute the contents of one Table. The Tables of 52 weeks having been hung up, when the Table of the 53d week is added, the Table of the first of the 52 weeks will be consigned to another repository: and so on in such sort, that thereafter there will be at all times in the Chamber, open to universal inspection, the matter of the whole year, ending with the existing week: or, if the walls, all or any of them will conveniently exhibit any greater number of weeks, in exact succession to one another, so much the better.

Section XXIX.

Relation to Local Registrar.

Enactive.

Art. 1. Whatsoever the Local Headman, as such, does, the Local Registrar records.

Enactive.

Art. 2. To every act of the Headman, the Registrar attaches his opinion. He exercises the *commentative* function: as per Ch. xvi. Quasi-Jury, Section 3, *Functions.*

Enactive. Expositive.

Art. 3. It is expressed by one or other of three formulas: 1, *Approved*; 2, *Disapproved*; 3, *Approved submodo.* In this latter case he makes entry of the decrees modified, as in his view the case requires.

Enactive.

Art. 4. The Registrar has not, directly or indirectly, a negative on any act of the Headman, except as per Section 20, Art. 8. To the Registrar's *Disapproved*, the Headman attaches, if he thinks fit, the words *Ordered notwithstanding*, with his signature, and the day when written. So, likewise, to the Registrar's *Approved submodo.* Function thus exercised, the *Non-obstante* function.

Enactive.

Art. 5. So, likewise, in case of delay on the part of the Registrar. Formulary in this case, 1. *Communicated:* then follow day, hour, with *deliberation time* allowed, and signature: Formulary at the end of that time: 2. *Deliberation time elapsed, order confirmed.*

Enactive.

Art. 6. By the Headman and the Registrar, the same official apartment will be occupied, as in the case of the Judge and the Judiciary Registrar. Of this apartment, the Headman will be, as need or occasion call, the frequent, the Registrar the constant, occupant.

Enactive.

Art. 7. Exceptions excepted, that which is here said of the Principals, applies to their respective Deputes.

Enactive. Expositive.

Art. 8. With relation to everything done by the Registrar in the process of registration, the Headman possesses the *inspective* function: so, likewise, the *commentative*, and the *melioration-suggestive:* and all discourse, which, in the exercise of either of these his functions, the Headman delivers, the Registrar at the request of the Headman, as testified by his signature, will enter upon the Register.

Enactive.

Art. 9. In like manner, with relation to everything done by the Headman, the Registrar possesses the *commentative* and *melioration-suggestive* functions.

Enactive. Instructional.

Art. 10. For any breach of official duty on the part of the Headman, of which the Registrar had, or but for his own default would have had, cognizance,—the Registrar, in case of his omitting, or wilfully, or through negligence, delaying, to give official information thereof, to the Judge, is responsible, satisfactionally, punitionally, and dislocationally, as for connivance: in like manner, as are a Quasi-Juryman, a Government Advocate, and an Eleemosynary Advocate, for connivance at delinquency on the part of a Judge.

Enactive.

Art. 11. So, likewise, the Headman, in case of any breach of official duty on the part of the Registrar.

Enactive.

Art. 12. Of every portion of discourse, entry of which the Headman requires to be made in the Register, he makes entry accordingly, under the same conditions as those which is

the Immediate Judicatory have place as between the Registrar and the Judge: as per Ch. xxi. IMMEDIATE AND APPELLATE REGISTRARS, Section 2, *Relation to Judge.*

Enactive.

ART. 13. During the exercise given to his several functions, as far as may be, matters will be so ordered as that the Headman, or if he cannot be, a Depute of his, shall be present: yet so as for want of such presence, the service performed by the exercise of the function shall not be frustrated or impaired, or preponderant inconvenience, in the shape of delay, vexation, and expense, produced: and of the non-presence of the Headman, the cause will be stated on the record: so if neither the Headman nor any Depute of his are present, the cause of such complete non-presence.

Instructional. Ratiocinative.

ART. 14. In the situation of Local Registrar, as in that of the Registrar of a Judicatory, the functionary by whom the business of registration is conducted, should be stationary: and in this case, for the same reasons as in that. In the case of the Headman, as in the case of the member of the Legislature, and the member of a Sublegislature, it is desirable that he should not be stationary; and though his power is entire, and theirs but fractionary, the reasons that applied to those two cases may be found applying in some measure to this.

Instructional. Exemplificational.

ART. 15. For his natural Mentor, this comparatively inexperienced functionary will have his comparatively experienced associate, the Registrar.

Thus in the city of London, in the situation of Alderman; for that part of his business which is performed by him, in his character of Justice of Peace, the Alderman has his clerk: a man whose attention is confined to this business only. By him are the interrogations put, while the Alderman, sitting above him, and looking grave, yields auspices.

SECTION XXX.

Securities for appropriate aptitude.

Enactive. Instructional.

ART. 1. Securities for appropriate aptitude on the part of a Local Headman, are these which follow:—

1. Single-seatedness in this as in all Administrative and Judicial situations.
2. Interdiction of all emolument over and above established pay.
3. Prohibition of extra remuneration for extra despatch.
4. Effect of the precautionary indications for prevention of sinister profit.
5. Responsibility for subordinates.
6. In case of specific delinquency, responsibility,—satisfactional, punitional, and dislocational.
7. So, without specific delinquency assigned, dislocability.
8. Exposure to the judgment of the Public-Opinion Tribunal.
9. Obligation of maintaining with the Registrar an uninterrupted communication.
10. Official Duty Table, constantly in the conjunct view of this functionary, and all persons having business at his office.
11. Deportment Rules in like manner constantly in view.
12. Incidental Complaint Book.
13. In the General Register of the Office, Registration of everything done or said by him on the occasion of the exercise of his functions.
14. Character Index.
15. Merit Register.
16. Demerit Register.

As to these securities, in detail, see Ch. ix. MINISTERS COLLECTIVELY, Section 25, *Securities for appropriate aptitude.*

SECTION XXXI.

Inaugural Declaration.

Enactive.

ART. 1. Every Local Headman, on his entrance into office, will pronounce an appropriate Inaugural Declaration, in his official apartment. The Registrar will, in each instance, make an entry of the pronunciation of the Declaration.

Expositive.

ART. 2. For the form of an appropriate Inaugural Declaration, see Ch. xii. JUDICIARY COLLECTIVELY, Section 31, *Judges', &c., Inaugural Declaration.*

CHAPTER XXVI.*

LOCAL REGISTRARS.

SECTION I.

Fields of Service.

Enactive.

ART. 1. Of the service of a Local Registrar, the local field is the same as that of his companion in office, the Local Headman.

* Since this chapter was written, a general system of Registration for births, deaths, and marriages, has been established in England by the 6 and 7 W. IV. c. 86, as amended by the 7, W. IV. and 1 Vict. c. 22. The reader who is acquainted with the provisions of these acts will find them in their broader and more essential features anticipated in the following pages: and to the author's discoveries and opinions on the subject of Registration, set forth in his other works, (and especially in book iv. of the Rationale of Evidence,) we may safely, as in so many other instances, trace the source of this

Enactive. Instructional.

Art. 2. The logical field is marked out by the functions, delineated in the fourteen following Sections.

Enactive. Instructional.

Art. 3. Of the service of the Local Registrar, the ordinary field, is no other than that which is occupied by the recordation of preappointed evidence. Incidentally and momentarily, it may become applicable to the purpose of a suit, to which it gives commencement: and so far as this is the case, the evidence elicited by him takes the character of litiscontestational evidence, as per Ch. xxi. Immediate and Appellate Registrars, Section 1, *Fields of Service.*

Section II.

Self-suppletive Function.

Enactive.

Art. 1. To a Local Registrar, as to a Local Headman, belongs the self-suppletive function, together with the obligation of keeping it in exercise.

Enactive.

Art. 2. To the situation of Local Registrar, apply the several other articles, which, as per Ch. xxv. Local Headmen, Section 2, *Self-suppletive function*, apply to the situation of Local Headman.

Section III.

Functions in general.

Instructional. Enactive.

Art. 1. For the *elementary* and separately ineffective functions, of which the process of effective registration is composed, see Ch. xxi. Immediate and Appellate Judiciary Registrars, Section 4, *Elementary Functions.*

Enactive. Instructional.

Art. 2. For the mode of *minutation*, see that which is directed to be employed in the Judiciary Registry, as per Ch. xxi. Immediate and Appellate Judiciary Registrars, Section 5, *Minutation how.*

Enactive.

Art. 3. In Section 5, and those which follow, are detailed the several functions belonging to this office, such excepted, in the exercise of which a conjunct part is borne by the Local Registrar, and the Local Headman: as to which see Ch. xxv. Local Headmen, Section 29, *Relation to Local Registrar.*

Enactive.

Art. 4. On the occasion of the several functions, by the exercise of which such occurrences as call for minutation are recorded, a description will be given by this functionary of the persons by whom the relative information is delivered. Heads, the following:—

I. *Person* or *persons* from whom elicited. Subheads:

1. Sex.
2. Names, surnames and christian, or the equivalent, the whole at length.
3. Age, mentioning the year, month, and day as far as known.
4. Occupation.

II. *Place* at which the information is elicited: whether the Registrar's official chamber, or any and what other place: if a house, making known the house or other place, as per Ch. vi. Legislature, Section 13, *Vote-making habitations, how defined.*

III. *Time* at which the information is elicited. Subheads: year, month, day of the month, day of the week, hour.

Instructional. Exemplificational.

Art. 5. Examples of the matter of various sorts of preappointed evidence.

I. Memorandums of events ablative and collative, as to title to property, power, and condition in life.

1. Deaths.
2. Births.
3. Marriages.

II. Legally operative species of statements. These are,

4. Conveyances at large, such as the Legislature shall have ordered, or permitted to be thus registered or recorded, namely, the originals, or transcripts, including, I. Conveyances of actual transfer; II. Conveyances of encumbrances or eventual transfers; and III. Discharges of such encumbrances.
5. Conveyances testamentary, or say, post obituary, in particular.
6. Contracts ordained or permitted, as above, in case of conveyances.
7. Declarations, delivered under or without interrogation, concerning facts, eventually collative or ablative, in relation to title, to property in things, or to services of persons, or power, or condition in life,—and capable accordingly of serving in the character of evidence.

Enactive. Expositive.

Art. 6. As to the Books into which the various minutes or entries are made, the Local Registrar exercises the *custoditive* and *applicative* functions, and also the *communicational*,

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step in civilisation. Those who are familiar with the working of the present system, will be no less struck with the accuracy with which the author has anticipated its advantages. When the Registration Bill for England was brought forward, a like measure was proposed for Scotland. It was opposed by the Church, and has now (1841) been for some years past forgotten.—*Ed.*

as to the faculty of inspection. As to the Edifices or Apartments in which they are deposited, the *custoditive*.

SECTION IV.

Genealogical-recordation Functions.

Expositive.

ART. 1. By genealogical registration, understand registration of Deaths, Marriages, Divorces, Births, Arrivals at Full Age, Lapses into Insanity, and Restorations to Sanity.

Instructional.

ART. 2. Of the apt registration of these several occurrences, the several *useful effects* and *purposes* may be stated as follows:—

I. PROPERTY-SETTLING PURPOSES.

1. Establishing title to *property*.

2. Establishing title to *support* or *relief*, at the charge of near relatives, in case of indigence.

3. Establishing at the charge of one relative *liability* as to debts contracted by another.

4. Establishing title to *condition in life:* to wit, in respect of parentage, consanguinity and affinity.

5. Establishing title to *self-government*.

Instructional.

ART. 3. II. HEALTH-PRESERVING PURPOSES.

6. Furnishing matter and grounds for inferences, contributory to the increase of general *health*—the diminution of mortality and disease: for investigating the *causes* of disease in its several shapes; and thence for devising of *remedies*, sanative and preventive.

7. Furnishing grounds for determining the comparative degrees of *salubrity* of *places* in different situations; with a view to individual settlements, and public establishments.

8. Furnishing grounds for determining the comparative degrees of salubrity, as between *occupation* and *occupation*, in places alike circumstanced: that persons who are willing to engage in insalubrious occupations, may be the more effectually enabled to obtain adequate compensation in other shapes, for their sufferings in respect of health.*

Instructional.

ART. 4. III. PRIVATE ECONOMY-AIDING PURPOSES.

9. Furnishing grounds for calculation, respecting the *rate of mortality*, with a view to the purchase of life annuities, and post-obit provision for relatives: thereby enabling each proprietor to employ his money to most advantage, whether for his own benefit, or for the benefit of any persons dear to him: and this without sensation of loss to any one else.

Instructional.

ART. 5. IV. POLITICAL ECONOMY-SERVING PURPOSES.

10. Furnishing, at all times, indications of the state of the population, at different periods, in respect of increase and decrease, in the several different parts, and thence of the whole, of the territory of the State: to wit, with a view to the causes of any such excess or deficiency, and thence to the appropriate remedies.

Instructional.

ART. 6. V. CALAMITY AND CASUALTY-MINIMIZING PURPOSES.

11. By affording continual indication of the several disasters that have been known to have place, whether on the more extended scale of *calamity*, or the more contracted scale of ordinary *casualty*,—directing the attention of the public, and of the Government, to the minimization of the like in future.

Instructional.

ART. 7. VI. CRIME-MINIMIZING PURPOSES.

12. The case, in which this purpose is capable of being served by registration in this shape, is almost exclusively that of *death*. The way in which this purpose is served is—by bringing to light the instances in which that result has had criminal or culpable conduct among its concurrent causes: thus, whether it had for its cause, design, or negligence, giving publicity to the fact, with its several material circumstances, with a view to legal pursuit; and, by maximizing the probability of detection, minimizing the frequency of the offence.

Instructional.

ART. 8. VII. INDETERMINATE PURPOSES.

In a period of the same length, and among the same number of deaths from all causes taken together, the condition of the portion of territory in question in respect of the points following should be attended to:—

1. Natural salubrity or insalubrity.

2. Sufficiency or insufficiency of employment for labouring hands.

3. Salubrity or insalubrity of the occupation in which the greatest number are employed.

4. Temptations offered to prodigality.

5. Degree of prevalence of habitual drunkenness.

6. Form of the Local Government: to wit, of one Headman's Territory, as compared with another: or of one District, or say, Sublegislature's Territory, compared with another.

7. Form of the General Government, as compared with the form of Government in this and that other political State.

8. Notions most extensively prevalent on the subject of religion: in particular as applied to the case of deaths by suicide.

* Since the establishment of the Registration System in England, the Reports of the Registrar General have from time to time supplied extensive information, and been the source of various comments in relation to these heads.—*Ed.*

Section V.

Death-recordation Function.

Enactive.

Art. 1. In the exercise of this function, on the occasion of every death that happens within his territory, the Registrar receives and extracts information concerning it: that is to say, concerning the mode, the known or supposed causes, and the material consequences of it.

Enactive. Instructional.

Art. 2. Heads and Sub-heads under which the information furnished will be entered, are the following: added under each Sub-head, will be one or other of the three words following —to wit, *Known*, *Supposed*, or *Unconjecturable*.

I. Person of the deceased, Sub-heads as per Section 3, *Functions in general*, Art. 4.

II. Place of the death; as per Section 3.

III. Time of the death; as per Section 3.

IV. Cause of the death. Sub-heads are, mere old age, disease, or casualty.

1. If disease, name of the disease.
2. If casualty.
   1. What.
   2. Persons contributing to it, any, and who.
   3. As to each, whether with or without design to *hurt*.
   4. If with design to hurt, whether with or without design to *kill*.

V. Persons, if any, present at the death. Sub-heads, as to each, are:

1. Sex.
2. Names.
3. Age.
4. Occupation, or occupations.
5. Abode, or abodes.

Enactive.

Art. 3. From these elementary Tables, the Registrar will frame *Digested Mortality Tables*, annually, or if need be, oftener.

Enactive.

Art. 4. Disposed of by him will exemplars thereof be as follows:—

1. Kept in the Office, one.
2. Transmitted to the Health Minister, one.
3. Transmitted to the Immediate Judicatory, one.
4. Transmitted to the Appellate Judicatory, one.
5. Transmitted to the Prime Minister, one.
6. Transmitted to the Legislation Minister, one.
7. Transmitted to the Sublegislature of the Territory, one.

Enactive.

Art. 5. In relation to the evidence thus to be obtained, he possesses power, receptive and extractive, in the same manner as does a Judge Immediate.

Enactive.

Art. 6. In a case where, as per Article 2, No. IV., any person has been stated, or is by him suspected to have been, contributory to the death, in a criminal or culpable manner, as therein mentioned, he will forthwith transmit to the Immediate Judicatory, an exemplar of the record of the inquiry as above, of which such statement or suspicion is the result.

Enactive. Instructional.

Art. 7. Follow certain other functions subjudiciary, exercisable by the Registrar on the occasion of deaths. *Reason.* Impossibility of their being exercised by the Judge, in time for the eventually requisite ulterior judicial operations.

He will, if in his judgment it be necessary, issue and cause execute, a prehension and transduction mandate, for taking into custody every such suspected *person*, and conveying him forthwith to the Immediate Judicatory, together with every such *thing*, as it may appear necessary, or preponderantly useful, in the character of sources of written or real evidence. Name of the function, the *Prehensive*.

Enactive.

Art. 8. So, where the deceased was found dead, or in a dying state, in a street, road, or any other open and public place,—he will, in like manner, transmit information to the Immediate Judicatory, although no such cause of suspicion at the charge of any person in particular shall have as yet appeared.

Enactive.

Art. 9. The body he will, in this case, keep in his custody, until there has been time for his receiving the directions of the Judge in relation to it.

Enactive. Instructional.

Art. 10. The fact of the death being established and recorded, and the time for receiving directions from the Judge, as per Art. 9, having expired, he will deliver the body to the known *Post-obit trustee*, *testamentary*, or *vice-testamentary* of the deceased, or any person properly authorized by such trustee, by a warrant, authorizing him to dispose of the body by interment, or in any such other mode as he may choose.

Enactive. Instructional.

Art. 11. If the body be that of a person unknown, or of a person for whom no such *trustee* has appeared, nor, to the belief of the Registrar or the Headman, is likely to be found, antecedently to the time at which, by putrescence, it will have been rendered a source of annoyance,—he may place it at the disposal of a medical practitioner for the advancement of medical art and science. In such case, he will give the preference to any practitioner who

shall have attended the deceased at his last moments, or who, after the decease, shall have been called in for the purpose of the inquiry into the cause and manner thereof as above.

Enactive.

ART. 12. If no such practitioner be to be found, the Headman will dispose of the body in any such other manner as he shall think best, and will make entry of such disposal upon the record.

Enactive. Instructional.

ART. 13. If, for the purpose of examination, in the course of the inquiry as to the cause of death, the Registrar has deemed it necessary to prehend any person, although not at the time suspected of having been contributory to the death, and has accordingly caused him to be prehended, he will take his examination accordingly.

Enactive. Instructional.

ART. 14. In case of obstinate silence or evasive responsion, or responsion believed or suspected to be wilfully false,—he will cause convey him to the judicatory, in like manner as a suspected person, together with an exemplar of the record of the examination.*

Enactive. Instructional.

ART. 15. If, in any case in this section mentioned, the delay necessary to the transmission of an exemplar of the record, would be attended with preponderant inconvenience,—the Registrar may, for the present, transmit a brief abstract, or notice, together with an intimation of the time at which the exemplar may be expected. Appropriate formularies will be found provided in the Procedure Code.

Enactive. Instructional.

ART. 16. In the prehension mandate, as per Art. 7, or 13, may be contained an authority, in case of necessity, to prehend the person in question in any adjacent Local Headman's territory, or even in any other in the State. But, in this case it must be accompanied by a transcript of the record up to that time, and contain a clause requiring the persons and things prehended, to be forthwith delivered into the custody of the nearest Immediate Judge.

Enactive. Instructional.

ART. 17. When, in case of casualty, as per Art. 2, the person, though not actually dead, appears to be in imminent danger of death, the same powers may be exercised, as are herein appointed to be exercised, in case of actual death.

Instructional.

ART. 18. By these two local functionaries —the Headman and the Registrar—are performed in conjunction the several kinds of service performed under English bred-law, by the Keeper of the Parish Register, and the Coroner with his Jury.

Of the English system, the extreme inadequacy is among the results of the inexperienced and barbarous ages in which it took its origin. The Coroner's inquest, though better than nothing, would be palpably inadequate, were it only for the distance to which this functionary has to go, especially in the largest counties, and the expense necessitated by two journeys. The direction of this important function being left to the nonentity called Common Law, the conduct of the Coroner is altogether arbitrary, and is determined on every occasion by whatever sinister interest happens to have place. The notification, too, in this case, is confined to deaths, known or suspected to be violent.

SECTION VI.

Marriage-recordation Function.

Enactive.

ART. 1. In the exercise of this function, the Local Registrar causes recordation to be made, as they occur, of all marriages celebrated within his territory.

Enactive.

ART. 2. So likewise of all divorces.

Enactive.

ART. 3. With relation to the Register Book, in which these occurrences are recorded, he exercises the *custoditive* function.

Instructional.

ART. 4. The business of marriage is subjected to difficulties and causes of complication which have not place in regard to deaths or births. 1. Parties two; 2. Families two; 3. Anterior residences frequently in different bis-subdistricts; 4. Places of celebration different from the places of anterior abode of both, or either. Care and regulation will also be requisite to obviate error by the registration of the same contract in different places, and thus giving it the appearance of so many different contracts.

Instructional.

ART. 5. As to the conditions, the fulfilment of which shall be rendered necessary to the validity of this species of contract,—or say causes of invalidation,—they belong to the Civil Code.

Exemplificational.

ART. 6. In England, the entering into this

* It is here assumed as matter of necessity, that in the official residence of every Local Headman, there is a *strong-room*, in which persons, who have been examined, or who are in waiting to be examined, may be kept, until they can be conveyed to the Judicatory of the Sub-district.

contract has been mixed up with religion, and the performance of a religious ceremony by a Priest is necessary to the validity of the contract.* For the performance of the ceremony, too, fees are exacted from all alike.

Section VII.

Birth-recordation Function.

Enactive.

Art. 1. In the exercise of this function, the Local Registrar causes recordation to be made of all births as they take place within his territory.

Enactive. Instructional.

Art. 2. Heads, under which, in the *Birth-recording Register*, entries will be made, are the following:—

1. Sex.
2. Father's names, as reported, exceptions excepted.
3. Father's age, as reported.
4. Father's occupation, as reported.
5. Mother's names as reported, exceptions excepted.
6. House where born—description as per *Election Code*, Section 10 (vol. iii. p. 583.)
7. Year, month, and day of the month: and, as near as can be guessed, the hour as reported.
8. Persons, if any, present at the birth.
9. Person or persons by whom the report was brought to the office: their names, under the handwriting or signature of each respectively.
10. Year, month, day, and hour at which the Report is received.
11. Names given, or if any proposed to be given, to the child, as reported.

Instructional.

Art. 3. As to exceptions, whether any and what shall have place, will depend upon the state of the laws respecting sexual intercourse, and its consequences.

Instructional.

Art. 4. In regard to the statements here required, the case of children born out of marriage, or from an adulterous intercourse, requires to be kept in view. On this occasion, two opposite evils present themselves. On the one hand, disgrace entailed upon the irreproachable offspring, in addition to that suffered on the same account by both parents, but in the vastly higher degree by the mother; on the other hand, for the hope of exemption, judicial falsehood, in intended effect, tantamount to what, under the existing swearing system, is styled *perjury*.

Instructional. Exemplificational.

Art. 5. In the exercise of this function also, has religion been mixed up in England, under the name of christening, and fees of course exacted for the performance of it. Without the payment of these fees, and declaration made of belief in certain religious opinions, no individual is admitted to the benefit of this substitute for registration.† Thus, with respect to the registration of deaths, marriages, and births, of the seven distinguishable purposes mentioned in Section 4, of none but the first, is any care pretended to be taken by Government. Much more apt is the footing on which this business stands in France. Neither into the registration of deaths, marriages, or births, is what is called religion, admitted to interfere. The apt registration of these facts, taken in the aggregate, is there regarded as a work of prime necessity, with reference to the purposes, public as well as private, mentioned in Section 4, and the exaction of any fees, for such registration, is prohibited by law. See the Code Civil, de Napoleon, Liv. i. Tit. ii. Ch. ii. iii. iv.

Section VIII.

Maturity-recordation Function.

Enactive.

Art. 1. In the exercise of this function, the Local Registrar records the day on which each person has arrived at the age of complete self-government, for which purpose he will elicit sufficiently probative evidence of the fact.

Enactive.

Art. 2. So, arrival at the several other ages, if any, at and not before which, he or she is by law competent to the exercise of this or that particular right or power.

Instructional.

Art. 3. Examples are the following:—

1. Right of choosing a *guardian*.
2. Right of making a *will*, or say a *post-obituary disposition*.
3. Right of contracting *marriage*.

Section IX.

Insanity-recordation Function.

Enactive. Expositive.

Art. 1. In the exercise of this function, the Local Registrar records, as soon as adequate evidence thereof has been elicited by him, the existence of *insanity* in the instance of any person, resident at the time within his territory.

Expositive. Ratiocinative.

Art. 2. By insanity, understand such infir-

* This has been altered by the Registration Act. —*Ed.*

† This is not now required by the Registration Act.—*Ed.*

mity of mind as either for the sake of persons in general, or for the sake of the person himself alone, otherwise than on the account of non-age or criminality, an effectual demand is produced for the subjecting of his body or his mind, or both, to restraint, under the care of some person or persons, by authority of law.

Expositive. Ratiocinative.

ART. 3. In some cases, only as a channel for conveying the information to the Judge, is the ministry of the Registrar needed: name of the function in this case the *Insanity-informative.* Use and reason, saving in respect of delay, vexation, and expense, in the journeys of information. In other cases, the nature of them may require that, by this functionary himself, means of security should immediately be employed: use and reason, prevention of immediately impending mischief. Name of the function in this case the *Insanity-obviative.*

Instructional.

ART. 4. For the marking the requisite distinction in practice, between these two classes of cases, as per Art. 2, the several modifications, which in these respects the infirmity admits of, require to be distinguished and brought to view.

Expositive. Instructional.

ART. 5. Insanity is either 1. *primæval*, or 2. *adventitious.* Name, when primæval, (in English,) *idiotcy:* adventitious, it is either 1. *Incidental*, or 2. *Superannuational.*

Incidental, considered as to its effects, may be distinguished into *universally-dangerous*, and purely *self-dangerous:* self-dangerous insanity may, as delinquency, be so in respect of *person, property, reputation*, or *condition in life:* in respect of person, by *self-destruction* for example, or *irreparable self-disfigurement, self-disablement*, or *self-mutilation:* in respect of property, by *prodigality*, or *improvident management:* in respect of reputation, by indecorous *self-exposure*, or *self-disgracing discourse:* in respect of condition in life, by *ill-assorted marriage.*

By *superannuational* adventitious insanity, understand that which is sometimes produced by old age.

Expositive. Ratiocinative.

ART. 6. Considered as to its effects, insanity may be distinguished into 1. capricious; 2. malicious; 3. rabid; and 4. melancholy. Where capricious, malicious, or rabid, a necessary supplement to the recordation function may be *that* which is exercised by the operations, having for their object the prevention of the *impending mischief:* name of the function, as above, the *insanity-obviative. Reason* for the institution of it, length of the distance of the Judiciary Registrar's office from the sources of the information: thence, danger of mischief before any preventive arrangements can be taken by the Judge. In the case of melancholy insanity, the mischief is continual, but special danger has no place.

Enactive. Instructional.

ART. 7. In respect of time, immediate and more or less urgent, but short, will be the demand for the exercise of the insanity obviating function by the Local Registrar, in the cases of primæval, superannuational, and melancholy insanity. After appropriate recordation made by him of the malady, the charge of permanent guardianship will devolve upon some other persons, non-functionary or functionary, the Indigence-Relief Minister, for example, according to directions given by the Judge.

Enactive. Instructional.

ART. 8. If, from the information received, it appears to the Local Registrar that the supposed insane person cannot, without danger either to others, or to him or herself, be left in a state of personal liberty, he will pronounce an appropriate provisional opinative decree and imperative order, declaring under the charge of what persons he or she shall be placed in a state of temporary confinement, and under what mode of confinement. Name of such person so appointed *Temporary Insanity Guardian.* Name of the instrument, *Insanity Temporary Guardianship Order.*

Enactive. Instructional.

ART. 9. If, in this case, it appears to the Registrar that the insane person has in possession, or effectually at command, pecuniary means adequate for the present to his maintenance, the Registrar will, by appropriate decree and order, authorize the guardian to receive and apply to that purpose such pecuniary means. Name of the instrument, *Insanity Temporary Alimentative Authorizing Order.*

Enactive. Instructional.

ART. 10. If it appear to him that the supposed insane person has not, in adequate quantity, in possession or effectually at command, such pecuniary means, he will, by appropriate decree and order, give direction to some person or persons, to advance from time to time to the Temporary Insanity Guardian, such requisite pecuniary means. Name of the person so charged, the *Temporary Insanity Alimentator.*

Instructional.

ART. 11. Permanent Insanity Guardian, who? Permanent Insanity Alimentator, who? for answer to these questions, see in the Particular Codes the *Insanity Sub-code.*

Instructional.

ART. 12. A question for the consideration of the Legislature will be, whether in any and in what cases, and in what mode, to put prodi-

gality upon a footing analogous to that of insanity, for preservation of property from waste, for individuals and families.

Exemplificational.

Art. 13. Under the English system, where to a person possessed of adequate property, insanity is imputed, around him flock the lawyers like vultures round a carcase. Many are the years, many the thousands of pounds, frequently thus consumed. Thus is prodigality, compulsory prodigality, organized at the expense, frequently to the ruin, of the afflicted family: organized by the power and for the profit of these pretended and self-constituted guardians.

Enactive.

Art. 14. Disposed of by the Local Registrar, are exemplars of the record as follows:—

1. Kept in the office, one.
2. Transmitted to the Immediate Judicatory, one.
3. Delivered to the Temporary Guardian, one.
4. Delivered to the Temporary Alimentator, one.
5. Transmitted to the Prime Minister, one.

Enactive.

Art. 15. Of every case of restoration to sanity, (evidence thereof, as expressed in an appropriate instrument, being elicited and delivered to the Local Registrar of the territory, in the Register of which recordation had been made of the insanity,) recordation will be made. Name of the instrument, *Restored-sanity Certificate.* For the persons by whom such certificate will be granted, and the conditions requisite to the grant of it, see in the Right-conferring, or say Non-penal particular Codes, the Insanity Subcode, as above.

Section X.

Post-obit-administration-granting Function.

Enactive. Expositive.

Art. 1. In the exercise of this function, on the decease of a person leaving effects in his territory, the Local Registrar receives application from any person stating himself or herself to be entitled to the administration of those same effects in the quality of *Post-obit Successionist*, or *Post-obit Trustee:* and if trustee, whether as *testamentary* or as *vice-testamentary trustee*, or say *administrator:* to wit, for the purpose of making disposal of them, for the common benefit of all interessees, whether as creditors, legatees, or kinsfolk.

The term *Post-obit Trustee* includes the idea of trust, and is therefore more expressive than the term *Executor:* the term *Post-obit* is already in use in English practice, as in the instance of a Post-obit Bond.

Enactive. Instructional.

Art. 2. He thereupon, according to the direction given in the *Right-conferring* and *Procedure* Codes, proceeds to inquire whether there be any person entitled and disposed to contest with such applicant the right to the possession and exercise of this trust. If it be clear to him that there is not, he accordingly, by an appropriate instrument, grants to the applicant the appropriate powers: if it be clear to him that some such proposed contestator exists, or if it be matter of doubt whether there does or not, he refers all parties to the Judge: on the Register he in every case makes entry of everything that has passed.

Enactive.

Art. 3. Exemplars of the Record will on this occasion be disposed of as follows:—

1. Kept in the office, one.
2. Of parties between whom the right is contested, delivered to each, one.
3. To the Registrar of the Immediate Judicatory, one.

Enactive. Instructional. Ratiocinative.

Art. 4. In case of need, for preservation of the effects from depredation, destruction, and deterioration, the Registrar has power to take them under his care, and so to keep them, until time sufficient having elapsed, the Judge, or under his direction the Eleemosynary Advocate, in the exercise of his supertutelary function, as per Ch. xx. Section 5, has taken them into his disposal. Use and reason, the same as in the case of the Local Registrar's Insanity-recordation function, as per Section 9: and in the case of the Local Headman, in virtue of his Hospitable Post-obituary function, as per Ch. xxv. Section 21.

Ratiocinative. Instructional.

Art. 5. Possible indeed it is, that in the instance of this, as in the instance of any other functionary, or any other individual trustee, it may happen to the trust to be abused. But in this possibility no adequate reason for withholding it from him can be deduced. In regard to appropriate aptitude, in the case of this functionary, security, the highest that the nature of the case admits of, will have been provided. Moreover, in his hands the duration of the trust, and thence of the faculty of abuse, is minimized. If from a functionary, for whose trustworthiness this security is given, the exercise of it being also under the constant inspection of the Headman, the power is withholden, it will remain in the hands of persons of all descriptions, the most untrustworthy not excepted.

The security thus afforded by the care of a functionary, who, by reason of the smallness of his territory, is nearer to the spot in question than any other can be, is *added*, not *substituted*, to the greatest security afforded by the current practice.

Instructional. Exemplificational.

ART. 6. In the whole of England, Wales included, there are but two offices at and from which the judiciary power in question can be obtained: that belonging to the Archiepiscopal Province of Canterbury, and that belonging to the Archiepiscopal Province of York. For the obtainment of the power in question, £5 is the minimum of the expense. Such is the expense if the place of the effects were next door to the office. Judge from hence what it may be at three hundred miles distance.

Instructional. Exemplificational.

ART. 7. This being the case, all persons interested in a mass of effects, which, after defraying the expense, will not afford a surplus, are without the benefit, whatever it may be, of the law, which has, or is supposed to have place, in relation to the subject. But in this case are the vast majority of the people. To what extent injustice on this ground may have place, no one can on any sufficient ground take upon him to say: and in so far as justice has place, the law of course gets the credit of it, but the real cause is in the probity and good conduct of the people, in spite of what, by the license and encouragement thus held out, the law does to render them dishonest.

Instructional. Exemplificational.

ART. 8. The person to whom the disposal of the property is intrusted, (a person of whom, casual exceptions excepted, too few to be taken into account, the functionary by whom it is granted has not any the smallest knowledge,) on the granting of the power, makes a promise on oath to deliver in, within a limited time, say a year, an inventory of these same effects. When the time comes, it has been delivered in —this same inventory—or not, as it may happen. But suppose it delivered in, what claim has it to confidence: to confidence on the part of persons interested? What check is there upon it, what security against falsehood and insufficiency? Preventive check, not any: reparative check, yes; to wit, by litigation: and at an expense such as, in the case of the vast majority, is sufficient to absorb, not only the whole subject matter of the litigation, but the whole property of all litigants on all sides.

Instructional. Ratiocinative.

ART. 9. Contrast this established with the here proposed state of things.

1. The abode of the Headman and his Registrar not being so far distant from the most distant abode in his territory, but that a person of adult age may, with ease, walk thither and back again in the course of a day, every habitation with every inhabitant is known to him. The arrangements made for the purpose of Elections, in the Election Code, as per Section 10, suffice to render it so.

2. The time at which the inventory is given in, may be fixed with joint regard to the quantity of the mass, the quality of the ingredients, and the facilities, natural and acquired, of the persons interested.

3. The power of disposal being given to some one, or some two in conjunction, the power of inspection (subject to such conditions as shall prevent obstruction to the disposal) may be given to all persons interested.

4. The comparison of the effects themselves, with the account of them as given in the inventory, will be as easy as possible.

5. Of the sale of such, as to prevent deterioration or deperition, it may be necessary should be forthwith sold, the fairness will have as many guardians and guarantees as there are persons interested, with the addition of their respective friends and neighbours.

6. Every arrangement, whether of substantive or adjective law, by which the disposal would be directed, being determined by the ordinances of real law, not as in England by imaginary and sham law, every one would know what he has to expect, every one would have in his hand an efficient check upon any act of such sinister design or carelessness, in which, without such check, the functionary on whom it depended might otherwise be apt to indulge himself.

Instructional.

ART. 10. True it is, that supposing, with the management of this functionary, the Headman of his territory, or any party interested, were dissatisfied, recourse to the Immediate Judicatory of the Subdistrict would be the only remedy. Here, then, would be litigation. But in respect of vexation and expense, what a contrast *such* litigation would make, with that litigation which has place in the established English practice, may be seen in the Procedure Code.

SECTION XI.

Property-transfer-recordation Function.

Enactive. Expositive.

ART. 1. In the exercise of this function, the Local Registrar, in manner ordained by the Legislature, exercises the recordative function, in relation to all instruments of *conveyance*, or say *property-affecting* instruments, to which, by the Legislature, or, subject to the authority of the Legislature, by the Sublegislature of the territory, exercise shall have been ordained to be given to it in the Local Registry.

Instructional.

ART. 2. For the list of property-affecting instruments, see the Non-penal Code, tit. *Instruments.*

Expositive. Instructional.

ART. 3. Purposes in this case, over and

above the advantage attached to the giving to the transaction a determinate form, by means of perpetually existing signs, are—

1. Securing the instrument against deperition.

2. Securing it against injurious alteration.

3. Securing individuals against loss, by fabrication of a false instrument.

4. To persons contemplating the giving credit to another, on the supposition of his having at his disposal the mass of property in question, affording security against its having been by antecedent obligations placed at the disposal of anterior creditors. Say, security against prior encumbrance.

5. To persons who might otherwise be disposed to contest the title of the proprietor to the interest in question, in the mass of property in question, rendering manifest the hopelessness of any such endeavour. Say, security against disturbance.

6. To persons disposed to purchase the mass of property in question, or an interest therein, affording security, and the persuasion of security against all claims on the part of others, on the ground of antecedent title on their part, or on that of the proprietor's want of legal power to make the disposition, whatever it be, which he may take upon him to make. Say, security for titles.

Section XII.

Contract-recordation Function.

Enactive. Expositive.

Art. 1. In the exercise of this function, the Local Registrar, in manner ordained by the Legislature, exercises the recordative function, in relation to all instruments of *contract*, to which, by the Legislature, or, subject to the authority of the Legislature, by the Sublegislature of the territory, exercise shall have been ordained to be given to it in the Bis-subdistrict Registry.

Expositive. Instructional.

Art. 2. In addition to the first three securities mentioned in Section 11, Art. 3, the grand use of committing this function in particular (although it applies to a great extent to all the functions in general) to so numerous a class of functionaries, is the consequent diminution of the delay, vexation, and expense resulting from the shortness of the distance between the seat of the evidence and the abodes of the individuals having need to deposit it, and thenceforward of those having need to inspect it.

Instructional.

Art. 3. Of contracts, as of conveyances, the exposition and relation belong to the Nonpenal Code. For clearness, correctness, and comprehensiveness of conception, not inconsiderable, would be the use of a common appellative, by which the import of both might be comprehended,—say *obligatory transactions.* A contract is a species of conveyance; for by it are conveyed rights to the services, whatever they are, which by the contract a person stands bound to render. What distinguishes a contract from a conveyance which is not a contract, is that by the conveyance the sole services the right to which is necessarily conveyed, are the negative services of persons at large, as well as the conveyors: to wit, the service consisting in abstaining from all occupation of the article conveyed. Of these services, which, on the occasion of the conveyance, the *conveyor* undertakes for the performance of, the word *covenant* is the denomination: so of those for which the *conveyee* binds himself for the performance: these covenants are so many *subsidiary contracts.*

Section XIII.

Extra-judicial-evidence-recordation Function.

Enactive. Expositive.

Art. 1. In the exercise of this function, the Local Registrar elicits, and records, all such evidence as, in contemplation of eventually existing suits, the Legislature, or subject to the authority of the Legislature, the Sublegislature of the territory shall have ordained or authorized him to receive: to wit, on the responsibility, satisfactional, and punitional, in case of falsehood of him by whom it is delivered: with or without power of receipt and extraction from persons other than him by whom the evidence is offered, and the recordation thereof requested, according as the Legislature shall have ordained.

Instructional. Ratiocinative.

Art. 2. In Ch. xii. Judiciary collectively, Section 24, *Non-contestational-evidence-elicitation Function*, this is among the purposes for which power to elicit, that is to say, to receive, and upon occasion extract, such evidence, is given to the Judge. By giving the same power to the Registrar of every Bis-subdistrict, the delay, vexation, and expense to individuals will be minimized, and the time of the Judiciary Registrar so far disburthened.

Instructional.

Art. 3. This seems moreover to belong, in a more particular manner, to the number of those cases in which,—to prevent unprofitable consumption of functionary's time, by frivolous, wanton, or ill-designing applications,—it may be advisable that a small pecuniary compensation, remissible in case of declared and credited indigence, should be required to be exacted, as a condition preliminary to the exercise of the function.

SECTION XIV.

Subjudiciary-topographic-evidence-recordation Function.

Enactive. Expositive.

ART. 1. In the exercise of this function, the Local Registrar exercises the *custoditive* function, in regard to all such *maps*, and other imitative documents, as, by order of the Judge, in explanation of a judicial decree, shall from time to time have been consigned to his charge.

Enactive.

ART. 2. So, likewise all such *maps*, bearing reference to land, or works upon or under land, as, on that occasion, may, by any interessee, have been consigned to his charge.

Enactive.

ART. 3. At a view taken of any object for a Judicial purpose, at an *Out-door sitting*, as per Ch. xiii. JUDGES IMMEDIATE, Section 2, *Out-door attendance*, he attends at any time, and officiates, in manner as ordered by the Judge.

SECTION XV.

Digestive Function.

Enactive.

ART. 1. From the original Population Tables, as per Ch. XXV. LOCAL HEADMEN, Section 28, *Reports—publicity*, will be copied in the manifold way, by the Local Registrar, exemplars in such number as shall have been deemed needful. Of these will be disposed of, five, in manner following:—

1. Kept in the office, one.
2. Transmitted to the Immediate Judicatory, one.
3. Transmitted to the Health Minister, one.
4. Transmitted to the Finance Minister, one.
5. Transmitted to the Prime Minister, one.

Enactive.

ART. 2. From the Tables of the several Bis-subdistricts, or his Subdistrict, the Registrar of the Immediate Judicatory, under the direction of the Judge, will, within one [week or month] after the conclusion of each solar year have framed a set of *Digested Tables*, adapted to the purposes of the Judicial department.

Enactive.

ART. 3. So, likewise, from the Tables of all the several Bis-subdistricts in the State, the Health Minister will frame another set, adapted to the business of the Health department.

Enactive.

ART. 4. So, likewise, the Finance Minister, a set adapted to the business of the Finance Department.

Enactive.

ART. 5. So, likewise, the Appropriate Minister attached to the Sublegislature, from the Tables of all the several Bis-subdistricts, within the District.

Enactive.

ART. 6. Of these respective Digests, when completed, the Registrar of the Immediate Judicatory, the Health Minister, and the Finance Minister, will each of them cause copies in the manifold way to be made, and exemplars disposed of in the manner following:—

1. Kept in the office, one.
2. Transmitted to the Prime Minister, one.
3. Transmitted to the Legislature, one.
4. Transmitted to the Sublegislature, one.

SECTION XVI.

Document Chamber.

Enactive. Expositive.

ART. 1. In every Local Registrar's Office, a chamber will be allotted to the purpose of maximizing publicity in regard to the matter of the above-mentioned Population Tables. Name of the Chamber,—The *Report Chamber*, or say, The *Document Chamber*.

Enactive.

ART. 2. Tables, to wit the originals, exhibiting the matter under the several heads, as per Section 4, will therein be kept hung up, for public inspection. Of this matter will be composed the furniture of the walls: one wall or portion of a wall being allotted to *Deaths;* another to *Marriages* and *Divorces;* a third to *Births* and arrivals at *Maturity;* a fourth to entries made of *Insanity* and restoration to *Sanity*. For other matters, see Ch. XXV. LOCAL HEADMEN, Section 28, *Reports—publicity*.

SECTION XVII.

Term of Service.

Enactive.

ART. 1. Of a Local Registrar, the term of service is the same as that of a Judiciary Registrar, as per Ch. xii. JUDICIARY COLLECTIVELY, Section 26, *Term of Service*.

SECTION XVIII.

Attendance.

Enactive.

ART. 1. Of a Local Registrar, the attendance is governed by the same rules as that of the Judge, as per Ch. xii. JUDICIARY COLLECTIVELY, Section 25, *Judges' Attendance*.

Section XIX.

Remuneration.

Enactive.

Art. 1. The pay of a Local Registrar is [ ] per day.

Received from unwilling hands, ulterior emolument is extortion; from willing ones, corruption.

Section XX.

Attendance and Remuneration, how connected.

Enactive. Expositive.

Art. 1. Vacation days excepted, the Local Registrar attends in his office every day in the year.

Vacation days are,—every seventh day, urgency excepted, as in the case of a Member of the Legislature, as per Ch. vi. Legislature, Section 20, *Attendance and Remuneration, &c.*

Enactive.

Art. 2. Vacation days excepted, sick or well, for no day, on which he does not attend at office, during office hours, does any Local Registrar, any more than any Legislator, Judge, or Judicial Registrar, receive his pay.

Enactive.

Art. 3. By the Local Registrar's Depute permanent, as per Section 2, *Self-suppletive function*, is kept an *Attendance Book*, in which the several days and hours, on which the Local Registrar principal attended, are set down by him: as to the mode, see Ch. xii. Judiciary collectively, Section 28, *Locable who.* Of the result, the Local Registrar, or in his default the Local Headman, transmits, on the last day of each month, an exemplar to the Judiciary Registrar of the Judicatory; another, for publication, to the editor of the nearest government newspaper.

Section XXI.

Locable who.

Enactive.

Art. 1. In the case of a Local Registrar, the qualification, constituted by service performed in the situation of a Depute, is the same as in the case of a Judge Immediate, as per Ch. xii. Judiciary collectively, Section 28, *Locable who.*

Section XXII.

Located how.

Enactive.

Art. 1. Located is a Local Registrar, by the same hands by which the Judges and Judiciary Registrars, are located: namely, the Justice Minister's.

Section XXIII.

Dislocable how.

Enactive.

Art. 1. Dislocable is a Local Registrar in the same manner as the Judge, as per Ch. xii. Judiciary collectively, Section 30, *Dislocable how.*

Enactive.

Art. 2. So, likewise, by a majority of the Electors of the Local Registrar's territory, convened or assembled for that purpose, in pursuance of a requisition signed by [one-fifth] of the whole number entitled to vote at elections, as per Ch. vi. Legislature, Section 5, *Electors, who.*

Section XXIV.

Securities for appropriate aptitude.

Enactive.

Art. 1. The same securities for appropriate aptitude, which, as per Ch. xxv. Section 30, are applicable to the situation of a Local Headman, also apply to the situation of a Local Registrar.

Expositive.

Art. 2. For a detailed exposition of these securities, see Ch. ix. Ministers collectively, Section 25.

Section XXV.

Inaugural Declaration.

Enactive.

Art. 1. Every Local Registrar, on his entrance into office, will pronounce an appropriate Inaugural Declaration, in the official apartment of the Local Headman.

Expositive.

Art. 2. For the form of an appropriate Inaugural Declaration, see Ch. xii. Judiciary collectively, Section 31, *Judges', &c., Inaugural Declaration.*

CHAPTER XXVII.

Judiciary Messengers.

Section I.

Messengers, or say Accersitors, who.

Expositive.

Art. 1. By a *Messenger*, understand a judiciary Mandate-bearer—a functionary, to whose function exercise is given, by causing knowledge to be had of a written mandate emaning from a Judge; and of the contents of such

instrument, in so far as acquaintance thereof is obtained by actual contact with, and physical possession of, the instrument, when delivered to the party addressed; or, in his stead, to some other person, for the purpose of its being delivered to him: arrangements for that purpose will have been made in the Procedure Code.

Expositive.

ART. 2. Accersitor is an appellation coincident with, but not altogether co-extensive with, Messenger or Mandate-bearer. Accersition, from the Latin, is in English hither-calling. Calling to the judgment-seat the individual addressed—calling him to it, that is to say, requiring him to repair to it, will accordingly be the most frequently exemplified purpose of the judicial mandate. But neither are other purposes wanting, for which the issuing of a judicial mandate may be necessary. Correspondent to the modifications of, or say the elementary functions included in the prehensive function, as per Ch. xxviii. JUDICIARY PREHENSORS, Section 2, will be those of the Messenger.

Enactive. Instructional.

ART. 3. In concert with the Finance Minister and the Interior Communication Minister, arrangements will be taken by the Justice Minister for causing all judicial mandates (exceptions excepted) to be delivered at the places to which, and to the persons to whom, addressed, by the several and respective functionaries acting as letter-carriers, under the direction of the Interior Communication Minister.

For this purpose, as by any person at large, so by a Letter-Post functionary in particular, a letter thus sent, by or from a Judge, can with as much facility, as if by or from any person at large, be conveyed to the place and person addressed.

Enactive.

ART. 4. In concert with the Finance Minister and the Interior Communication Minister, as above, the Justice Minister will, moreover, take the necessary arrangements for causing all judicial mandates, appearing on the face of them to be such, and the responses thereto respectively, to be delivered free of postage.

Instructional.

ART. 5. On the part of an individual wishing to escape from the fulfilment of any obligation imposed on him by the law, and endeavoured accordingly to be notified to him by the mandate of a Judge, a natural endeavour will of course be, to escape from the receiving information as above, of the existence of the corresponding judicial mandate, towards which, by the supposition, he is not disposed to pay obedience: so, likewise, when such information has been received by him, to escape from the being known to have received it. To check and obviate all such subterfuges is among the objects of endeavour of the Procedure Code, as per Ch. x. JUDICIAL COMMUNICATION.

Enactive. Expositive.

ART. 6. Judiciary Messengers, are either official or unofficial; or say special or occasional. Official messengers are the Letter-Post carriers, as per Art. 3. Special or occasional, are all persons employed as such, by or under the authority of a Judge.

CHAPTER XXVIII.

JUDICIARY PREHENSORS.

SECTION I.

Prehensors, who.

Expositive.

ART. 1. By *Prehensors*, understand a set of judiciary functionaries, to whose functions exercise is given by *prehension*, for whatsoever judicial purpose made, of persons or things, under and by virtue of corresponding mandates emaning from a Judge.

Expositive.

ART. 2. By *prehension*, understand taking physical possession of, and taking into their custody, persons and things, of which, under and by virtue of correspondent mandates issued by the Judge, (to whom they are respectively subordinate,) such possession is required to be taken.

Instructional.

ART. 3. For more particular functions included in the prehensive function thus applied, see the Procedure Code, Ch. xxii. PREHENSION.

SECTION II.

Fields of Service.

Enactive.

ART. 1. The local and logical fields of service of a Prehensor are the same as those of a Judge, as per Ch. xii. JUDICIARY COLLECTIVELY, Section 6.

Enactive. Expositive.

ART. 2. *Ordinary* and *extraordinary*, or say *occasional*. Such are the Prehensor's local fields of service.

Ordinary, that which coincides with that of the Judge, to whose Judicatory the Prehensor in question belongs: *extraordinary*, the respective local fields of service of any or all the several other Immediate Judicatories.

Enactive. Expositive.

ART. 3. Only when the person or persons, thing or things, which, requiring to be pre-

hended, are, or by the Judge are believed to be, (whether in a stationary or migratory state,) within the Judgeshire of some other Judge or Judges,—to the authority to act within his own Judgeshire, will be added by the Prehension mandate, issued by the Judge, authority to act within the territory of any other Judge.

Instructional. Ratiocinative.

Art. 4. Whether they be persons or things, or both, frequently it cannot be seen, whether at the moment of issuing the Prehension mandate, the proposed subject matters of prehension be in a stationary or a migratory state: nor, if in a stationary state, how soon from that state they may not pass into a migratory one: nor, in case of migration, into or through what other Judicatories the migration may not extend.

Accordingly, in the tenor of the prehension-mandate, at the moment of issuing it, the Judge, if he sees reason, will insert a clause, authorizing the Prehensor to extend to any other Judgeshire or Judgeshires, without exception, the exercise given by him to this his function. At the same time, if, in the individual case in question, there be any reason to suppose that, in preference to, or to the exclusion of, others, the subject matter in question is, in a more especial degree, likely to be found in this or that Judgeshire; in this case, in and by another appropriate clause, designation of such particular Judgeshire or Judgeshires will be inserted.

Enactive. Instructional.

Art. 5. As for other judicial mandates in general, so for these, printed forms in general terms, with appropriate blanks for the insertion of matter peculiar to the several individual cases, will be provided under the direction of the Justice Minister.

Enactive.

Art. 6. In case of any such judicial *invasion*, as above, the invading Prehensor will make a Report, specifying the Judgeshires so invaded, with the time of each such invasion, and the operations thereupon performed.

Section III.

Self-suppletive Function.

Enactive.

Art. 1. To a Prehensor, as to a Judge, belongs the self-suppletive function: with this difference, that in the case of the Prehensor, the instrument of deputation must be signed, not only by the Prehensor principal, but also by the Judge.

Enactive. Instructional.

Art. 2. Under and by virtue of his aid-compelling function, as per Ch. xii. Judiciary collectively, Section 12, at any time provisionally,—and lest on any individual occasion, by any accident, means of giving execution and effect to a judicial decree, should be wanting,—to the Judge it will belong, of his own authority, by appropriate instruments, to appoint Prehensor Deputes Occasional, in such number as the state of things may have been found to require.

Section IV.

Locable who.

Enactive.

Art. 1. The pecuniary competition having had place—a salary having, by the Legislature, been attached to the situation, as in the case of a Judge, as per Ch. xii. Judiciary collectively, Section 27, *Remuneration*, any man who can read and write, is locable.

Enactive.

Art. 2. Qualifications, 1. Ordinary. The aptitude of the candidate, in respect of the arts of reading and writing, will be exhibited in public in the Justice Chamber, immediately before the signature of the location instrument.

Enactive.

Art. 3. Of the day and hour at which the signature of the location instrument is proposed to be performed, notice effectually public will have been given; for any persons so inclined, to come in, and by their evidence respectively delivered and examination taken, show cause why such location shall not have place.

Instructional.

Art. 4. Of persons who, in respect of their antecedently habitual occupation, present themselves as affording a presumption of especial appropriate aptitude, examples are the following:—

1. Functionaries having served as serjeants, or in any superior or inferior grade, in the army subdepartment, being at the same time in respect of bodily vigour apt for a service, in which as in this case, bodily resistance on the part of others, is by the supposition liable to have place.

2. Functionaries having served in the Navy subdepartment, in grades analogous to the above.

3. Functionaries having served in the Preventive Service subdepartment.

Instructional.

Art. 5. Qualifications, 2. Extraordinary. Consideration had, that individuals of all sorts —foreigners as well as natives—persons not speaking any language spoken by any permanent inhabitant of the State—are liable to be subjected to the exercise of the power thus conferred, and regard being had to the need which has place for interchange of expression

of will, and correspondent expression of compliance and refusal, the locating Judge, on the occasion of the choice made by him, as between candidate and candidate, will have regard to the number of foreign languages, if any, in which the candidate is able to converse: *cæteris paribus*, the aptitude of the candidate being *as* the number of the languages, in which he is able to converse.

Instructional.

ART. 6. In making choice of a Prehensor, for the individual occasion, if the proposed Prehendee be a foreigner, the Judge will *cæteris paribus*, employ, in preference for the occasion, as Prehensor, if any such there be, an individual who is able to converse, either in the native language of the proposed Prehendee, or, if that cannot be, in some other language, in which the proposed Prehendee is able to converse.

Instructional.

ART. 7. Where the proposed Prehendee is of the female sex, the Judge will, if he thinks fit, make appointment of a person of that same sex, to act as attendant on the person of the proposed Prehendee, whether she be a foreigner or a native: this, for the purpose of minimizing the annoyance to which a person of the female sex may unavoidably be subjected, by being in the mode in question placed under the power of a person of the male sex: of which annoyance the intensity will naturally be in proportion to the degree of affluence to which she has been habituated. On such an occasion, the Judge will be upon his guard against the danger, lest, by means of such appointment, the intended prehension should in any way be frustrated.

SECTION V.

Located how.

Enactive.

ART. 1. Located by the Judge of the Judicatory, to which they belong, and under which they serve, will be all Judiciary Prehensors.

Enactive.

ART. 2. Performed will the location be, by an appropriate instrument, styled a *Prehensor-locating instrument*, under the signature of the locating Judge.

SECTION VI.

Dislocable how.

Enactive.

ART. 1. Dislocable at any time, by the Judge of the Judicatory, in which they respectively serve, are Judiciary Prehensors: by the Judge, that is to say, either of his own motion, or at the instance of, and appropriate demand accordingly made by, any other person whatsoever.

Enactive. Instructional.

ART. 2. When, and as often as, it happens to a Judge to dislocate a Prehensor, he will cause him to appear on a day appointed before him in the Justice Chamber, and there, after taking his examination, in so far as shall appear necessary, (if by the result thereof he is confirmed in his opinion of the inaptitude of this functionary,) will declare to him the cause or causes of his dislocation, and pronounce a dislocative decree accordingly.

Enactive. Instructional.

ART. 3. To the care of the Government Advocate it will belong, of his own motion, or, at the instance of the Judge, to secure in this, as in other cases, the exhibition of any such evidence, as for the forming of a ground for the proposed dislocative decree, may have presented itself as necessary.

Enactive. Instructional.

ART. 4. To the care of the Eleemosynary Advocate it will belong, in like manner, to secure the exhibition of any such evidence, as for averting the dislocative decree, may have presented itself as necessary.

Enactive. Instructional.

ART. 5. In this case, to afford a valid ground for the dislocative decree, it is not necessary that the *demand* for that purpose should have for its ground any offence of the number of those, the denunciation of which is exhibited in and by the Penal Code. The decree will have for its sufficient ground and warrant, the whole matter of the *record*, of which such examination as above constitutes the essential part.

Enactive.

ART. 6. Of this dislocative record, exemplars will be distributed in manner following:

1. Kept in the Judicatory, one.
2. Delivered to the Dislocatee, one.
3. Delivered to the dislocating Judge, one.
4. Transmitted to the Appropriate Appellate Judicatory, one.
5. Transmitted to the Justice Minister, one.

Enactive. Instructional.

ART. 7. Should the dislocative decree appear not sufficiently grounded either to the Judge Appellate or the Justice Minister, they will not, however, relocate the dislocatee in any Judicatory in which he will have to serve, under a Judge by whom, or at whose instance, he has been dislocated.

By his dislocation in one Judicatory, no peremptory bar will be opposed to his location in any other.

CHAPTER XXIX.

Sublegislatures.

Section I.

Fields of Service.

Enactive. Expositive.

Art. 1. In every District is a Sublegislature.

By Sublegislature, understand a political body, exercising, under the authority of the Legislature, either as to the whole or as to a part of its logical field of service, functions of the same nature as those of the Legislature.

Enactive.

Art. 2. Of the service of a Sublegislature, the local field is also the local field of a Judicial district. So many judicial districts, so many Sublegislatures.

Section II.

Functions in general.

Enactive. Instructional.

Art. 1. By each Sublegislature, under the authority of the Legislature, are exercised, within its local field of service, the several functions following:—that is to say—

1. Its Ministerial function.
2. Its Institution-rearing function.
3. Its Money-supplying function.
4. Its Expenditure-watching function.
5. Its Transfer-compelling function.
6. Its Information-elicitative function.
7. Its Publicity-securing function.

Of these several functions, the nature stands expressed in the seven sections following.

Section III.

I. *Ministerial Function.*

Enactive.

Art. 1. In the exercise of this function, a Sublegislature assists in giving execution and effect to all Government arrangements, when and in so far as called upon so to do by the Legislature.

Enactive.

Art. 2. So, if called upon by the Prime Minister; but with power in this case to appeal to the Legislature.

Enactive.

Art. 3. So, if called upon by any Sub-Minister, acting within the logical field of service belonging to his subdepartment.

Expositive. Enactive.

Art. 4. Power, in the above two cases, to appeal to the Legislature: those members of the Sublegislature who concur in the appeal, being personally responsible for any damage, which, in consequence thereof, shall, in respect of delay, or otherwise, have been suffered by the public service.

Section IV.

II. *Institution-rearing Function.*

Enactive. Expositive.

Art. 1. In the exercise of this function each Sublegislature, within its local field of service, subject to the authority of the Legislature, institutes and keeps on foot, Public Works and Establishments, such as it thinks fit, belonging to any of the local fields of service following: that is to say—

1. The Preventive Service Minister.
2. The Indigence Relief Minister.
3. The Education Minister.
4. The Domain Minister.

As to which, see the several chapters, sections, and articles, in which the several functions belonging to these several subdepartments are brought to view.

Expositive.

Art. 2. Comprehended in this function are the several elementary functions, comprehended under the general head of the Administrative functions in Ch. ix. Ministers collectively, and Ch. xi. Ministers severally.

Enactive. Expositive.

Art. 3. All these several functions the Sublegislature exercises, either immediately by its own hands, or unimmediately, by such other hands as it thinks fit: locating them accordingly; as also dislocating them as it deems convenient.*

Section V.

III. *Money-supplying Function.*

Enactive. Expositive.

Art. 1. In the exercise of this function, each Sublegislature provides funds, by taxes and otherwise, for the several branches of expenditure, of which, as per Section 4, it has the direction.

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* In so far as, in the exercise of these powers, any of the sublegislatures pursue rules different from those laid down in this Code, for the General Legislature, it will thus, at the instance of its own portion of the community, be making experiments in Legislation, wherefrom useful instruction may naturally be derived; and by the exercise of this faculty, the sentiment of free agency will be felt and nourished. If from improper exercise, serious danger in any shape to the community at large, should on any occasion be apprehended, the superordinate power of the Legislature will suffice for the averting it.

Instructional.

ART. 2. Among the cares of the Legislature, will be the keeping watch over the operations of the several Sublegislatures in this field, lest obstruction be thereby opposed to the efficiency of those, which have for their object the service of the whole state.

SECTION VI.

IV. *Expenditure-watching Function.*

Enactive. Expositive.

ART. 1. In the exercise of this function, the Sublegislature exercises, in relation to the persons, things, and other objects comprised within its fields of service, local and logical, the several functions which, in Ch. xi. Section 13, are attributed to the Finance Minister, to be by him exercised, in relation to the objects of the same denomination, belonging to the general service of the state.

SECTION VII.

V. *Transfer-compelling Function.*

Enactive. Expositive.

ART. 1. When, for the use and greater benefit of the whole district, or of any territorial division contained within it, or of any person or aggregate of persons belonging to it, the transfer of an article of property in any shape, is deemed necessary, the proprietor or proprietors at the same time declining to sell at any price, or declining to sell at the price offered, —to the Sublegislature it belongs, in the exercise of this function, to cause a value to be set upon the article, by apt valuers, (sufficient liberty of litiscontestation being, at the same time, allowed to the proprietor,) and upon delivery of the equivalent in a pecuniary or other shape, to cause possession to be delivered into such hands as the nature of the service indicates.

Enactive. Instructional.

ART. 2. In every such case, the constitution expects—not only that the benefit from the transfer be in due proportion, shared between the parties on both sides; but also that the compensation so allowed, be rather over than under that which shall appear to be the exact equivalent, for the loss sustained by reason of the expropriation: and that in such valuation, the value of affection, in a case susceptible of it, be not neglected.

Enactive. Instructional.

ART. 3. For the determining such compensation, the requisite examinations may be made, either by the Sublegislature itself, by a committee of itself, or by a person or persons at large, appointed for the purpose by itself; or by reference to the judicatory of any sub-district, contained within its own district. Provided that, if it be by any authority other than that of a judicatory, the proceedings shall be carried on with the same sort and degree of publicity as that with which the proceedings of a judicatory are accompanied.

SECTION VIII.

VI. *Information-elicitative Function.*

Enactive.

ART. 1. Exceptions excepted, the powers which the Legislature will exercise, for the collection of evidence, and thus on occasion, forming for its proceedings an appropriate ground, each Sublegislature, within its own territory, will exercise.

Enactive. Expositive.

ART. 2. Exception is—that which regards the invitation to an Agent of any foreign power: by the Legislature alone can this power be exercised.

Enactive.

ART. 3. In relation to the form of the aggregate mass of law belonging to its field of service, it exercises, by its own hand, or those of any person or persons employed by it, the functions of the Legislation Minister as delineated in Ch. xi. Section 2.

Enactive. Instructional.

ART. 4. In relation to its proceedings and the grounds of them, it also exercises the several functions statistic, recordative, custoditive, and melioration-suggestive.

SECTION IX.

VII. *Publicity-securing Function.*

Expositive.

ART. 1. In the exercise of this function, it gives to its several ordinances, and to the minutes and grounds of its several proceedings, whatsoever degree of publicity they are respectively susceptible of: yet so as that the evil, resulting in the shape of delay, vexation, and expense, from the mode of communication employed, be not such as to outweigh the benefit.

SECTION X.

Sublegislation-Inquiry Judicatory.

Enactive. Instructional.

ART. 1. When in one and the same arrangement, existing or contemplated, the interests of two or more districts are concerned, the Sublegislature of any one of them may send invitation to that of any other, to join in the formation of a composite Inquiry Judicatory. Bicomposite, tricomposite, or quadri-

composite, and so on, will such a Judicatory be, according to the number of the Sublegislatures.

Enactive.

Art. 2. By authority from any Sublegislature, an Inquiry Judicatory may exercise its functions within the territory of any other Sublegislature.

Instructional.

Art. 3. On any such occasion, it will be among the cares of such Judicatory to minimize the interruption or obstruction, if any, given to the proceedings of the Judiciary and other constituted authorities, in the district into which it migrates.

Enactive. Instructional.

Art. 4. Any conflict which, on such occasion, may have place between authority and authority, the Legislature will terminate : to wit, in such manner, as shall be deemed most conducive to the aggregate good of the service: conjunct regard being had to the elicitation of appropriate truth, and the minimization of delay, vexation, and expense.

Section XI.

Term of Service.

Enactive.

Art. 1. For a Member of a Sublegislature, the term of service is, in every particular, the same as for a Member of the Legislature.

Section XII.

Attendance.

Enactive.

Art. 1. In respect of attendance, to the several Sublegislatures apply the several provisions applied in Ch. vi. Section 18, to the Legislature: except in so far as, in consideration of the difference between the quantity of business in the two situations, the Legislature may, in the instance of this or that Sublegislature, think fit to diminish, in any way, the aggregate quantity of obligatory attendance.

Section XIII.

Remuneration.

Enactive. Instructional.

Art. 1. Of a Member of a Sublegislature, the pay is [ ] per day: vacation days included.

Ulterior emolument, if from unwilling hands, is extortion; if from willing ones, corruption.

Section XIV.

Attendance and Remuneration—how connected.

Enactive. Instructional.

Art. 1. In respect of the connexion between attendance and remuneration, to the several Sublegislatures apply the several provisions applied in Ch. vi. Section 20, to the Legislature.

Section XV.

Locable who.

Enactive.

Art. 1. Whosoever is competent to serve as Member of the Legislative body, is competent to serve as Member of any Sublegislative body.

Section XVI.

Located how.

Enactive.

Art. 1. In each subdistrict, immediately after voting for the election of a person to serve as Deputy from the district, in the Legislature, the voters vote for the election of another person to serve as Deputy from the subdistrict, in the Sublegislature of that same district. So many subdistricts, so many members of the Sublegislative body.

Section XVII.

Dislocable how.

Enactive.

Art. 1. To the several members of each Sublegislature, apply the several causes of dislocation, applied in Ch. vi. Section 30, to those of the Legislature.

Enactive.

Art. 2. They are, moreover, dislocable by the Legislature.

Section XVIII.

Securities for appropriate aptitude.

Enactive. Instructional.

Art. 1. To the several Sublegislatures, apply in general, the several securities, applying as per Ch. vi. Section 31, to the Legislature: any which cannot apply, will be indicated by the difference of the two situations.

Section XIX.

Inaugural Declaration.

Enactive. Instructional.

Art. 1. Immediately after the ratification made by the Election Clerk of the person who

has been elected a Member of a Sublegislature, —the person so elected will read aloud an Inaugural Declaration similar to that pronounced by a Member of the Legislature, with such alterations as the difference between the two situations requires.

Expositive.

ART. 2. For the tenor of this Inaugural Declaration, and the details relating to the reading of it, see Ch. vii. LEGISLATOR'S INAUGURAL DECLARATION.

CHAPTER XXX.

SUBLEGISLATION MINISTERS.

SECTION I.

Sublegislation Ministers, who.

Enactive. Expositive.

ART. 1. In each district will be a set of administrative functionaries bearing the same names, and within that local field having, exceptions excepted, the same logical fields of service, as the several Ministers of the whole State.

Enactive. Expositive.

ART. 2. In this case each Sublegislature, within its fields of service, local and logical, standing in the place of the Legislature, these several functionaries, its subordinates, will be in every respect on the same footing as those of the Legislature: namely, in respect of the several topics treated of in the different sections of Ch. ix. MINISTERS COLLECTIVELY.

Enactive. Instructional.

ART. 3. Taking the National Administrative Establishment for the standard of reference, each Sublegislature under the direction of the Legislature will settle with itself, and by appropriate ordinances express, in what particulars, and in what shapes, (the difference in respect of extent of local and logical field of service considered,) the nature of the case, in such instances, appears to require alteration.

Instructional.

ART. 4. In regard to union and separation of Administrative Departments, for example: by the comparative narrowness of the local field of service, considered in conjunction with that of the logical field of service, if union in either case has place, more subdepartments will naturally admit of being united in one hand, in the administration of a District, than in that of the whole State: and as between district and district, more in this or that one, than in this or that other.

Instructional.

ART. 5. The only instance in which it can be clear beforehand, that in and for a District, no minister correspondent to a National Minister can have place, is that of the Foreign Relation Minister: since it is for all Districts collectively, and not for any one in particular, that what is done in the Foreign Relation Department is done.

Instructional. Ratiocinative.

ART. 6. In the Land Defensive Force, it may seem that there can be no room for interference on the part of a Sublegislature; since it is to the defence of the whole, and not of any district more than another, that this branch of the national power is designed. But cases may happen, in which the Sublegislature of a district may have a use for this or that part of its own Radical Land Force; and so as the service in question, is not obstructive of the service due to the whole State, the Legislature will not inhibit the exaction of it.

Instructional.

ART. 7. So, in regard to the Sea Defensive Force. Yet what may happen is—that for the defence of this or that roadstead within the district, the Sublegislature of the district may be desirous of organizing, and keeping on foot, this or that portion of Sea Defensive Force, which, to the Legislature, having in view, in respect of defence and finance together, the interest of the whole, may not seem necessary.

Instructional.

ART. 8. So, more particularly in the case of this or that district, which may be regarded as entirely inland. But scarcely will there be any district which has not within it waters communicating in some way or other with the sea: nor thus, any, from and through which, persons and things may not have to pass for National Sea Defensive Service.

Enactive. Instructional.

ART. 9. In the Judiciary Department, this or that district, or not improbably every district, may see reason to have its District Advocate, correspondent to the Advocate General of the State. In that case, with the assistance of a competent number of Deputes, one and the same Advocate Principal may officiate in the several Immediate Judicatories, within or even without the district, as well as in the several Appellate Judicatories.

CHAPTER XXXI.

GOVERNMENT, SIMPLE OR FEDERATIVE.

SECTION I.

Topics for Consideration.

Instructional.

ART. 1. Throughout this Code, the supposi-

nication, under that system, would be promptitude in comparison of the least tardy, which in suits regarded as important, has place at present in English practice. Still, however, the quantity of it would constitute a serious objection, of sufficient weight, perhaps, in some cases, to turn the scale.

Instructional. Ratiocinative.

Art. 14. In addition to the adjustment of territorial limits as between State and State, it will be necessary to make adjustment of the use to be made of waters in the several States, whether running or stagnant, salt or fresh: the land covered with them respectively being so situated, as to be capable of being turned to use, by one, more, or all of the several States.

Of such uses, examples are as follows:—

1. Fishing.
2. Irrigation.
3. Navigation for the purpose of access to water, useful in either of the above two ways.
4. Navigation for the purpose of warlike operations, offensive or defensive, against a nation at whose hands hostility has place, or is apprehended and regarded as impending.

Adjustment must also be made of the limits within which, by encouragement, intended or unintended, given to this or that branch of its own trade, discouragement shall be applied to the trade of this or that other of the mutually contracting States.

These matters being adjusted, and a Judicatory, composed of agents from each State, for the peaceable termination of future contingent pursuits, established, the probability of continuing in a state of amity seems not to be, in any determinate degree, increased by coalescence into a Confederated State.

But under the federative system, in so far as, on the part of any one or more of the thus associating States, any plan of conquest, or less extensive scheme of depredation or oppression, at the charge of other States, one or more has place,—to the purpose of defeating such a scheme, the sort of Judicatory in question would not, with anything like certainty, be adequate: though by the publicity of such discussions, and the appeal thus made to the Public-Opinion Tribunal, every such mischievous scheme would receive the most effectual check, which, by anything but superior warlike force, the nature of things admits of.

Instructional. Exemplificational. Ratiocinative.

Art. 15. An idea which will be apt to present itself, and which, unless corrected, will be but too apt to produce pernicious error in practice, is this,—namely, that to establish an effective and permanent union of this kind, nothing more is necessary than to take for the model, and for a subject matter of exact imitation, the system exemplified in the case of the Anglo-American States. In one essential circumstance, the case of that confederacy is but too widely different from all those which, in the same continent, are either already formed, or are in a way so to be. This is the *eminent altitude* in which the public mind was seated, in respect of political and legislative intelligence, at the time of the establishment of the confederacy: while, in the other instances, the public mind has been reduced to a correspondently *low degree*, by Spanish tyranny and Portuguese misrule. Intellectual aptitude, in a maturer state, may be obtained from *without*; but moral aptitude, and in correspondent degree and proportion, must have place *within*, or all intellectual aptitude will be useless.

Instructional. Exemplificational.

Art. 16. Since the disruption of the Spanish Monarchy, several federations have been either effected or endeavoured. In no instance does it appear probable, that these unions have had, for their efficient cause, on the part of the ruling few, by whom they have been effected, an opinion that, of the change, a preponderant good to the many would be the result. The phenomenon has had for its more natural cause, perceived or unperceived, the love of power: for the more extensive the union, the greater the power in the hands of the Central Government, and thence of the several individual functionaries sharing in it.

In this case, ambition wears a mask less transparent than in most other cases.

Under the name of allies, history shows how the Athenians proceeded to render tributary so many republics, whom they found weaker than themselves.

Section III.

Government simple—its advantages.

Enactive. Ratiocinative.

Art. 1. Exceptions excepted, in no instance will a Federal Constitution, or, say, a confederated form of Government, be employed in preference to the simple, or, say, unconfederated.

Reasons. 1. Complicatedness of the Federal form: 2. Thence, difficulty of the several operations of creation and preservation in relation to it: 3. Difficulty of effecting an agreement as to the purport of the arrangements to be established: 4. Difficulty of framing apt expressions for the designation of those same arrangements: 5. Danger of jealousies, from supposed partiality, as to this or that particular State: 6. Danger of disagreement and eventual hostility on the part of the States, a confederacy of which is formed, or in contemplation to be formed.

Instructional. Ratiocinative.

Art. 2. The advantages which the Simple form possesses, in comparison with the Federative, howsoever constructed, are altogether obvious, and not less undeniable.

1. It is more easily understood: corruption is, therefore, more easily and surely kept out of it: for the less perfectly is the form and conduct of the Government understood by the many, the more easily will they be imposed upon by the few, and the sinister sacrifice, in proportion as opportunity offers, be thus made.

2. If, in general terms, the choice be in favour of the Federative, thereupon comes the choice as between every proposable modification of the Federative form, and every other: and here comes matter for debate without end.

3. A Federative form supposed established: danger of conflict between the general government and each particular government is a danger that cannot but be perpetually impending.

4. Take each dispute by itself, and suppose it settled, still the basis on which it is settled will be to be settled: and by the expression given to the settlement, whatsoever it be, so much additional complication is introduced.

5. In comparison of a Simple form of government, constructed upon the same republican basis, and framed or adopted, and carried into execution and effect, by a people under the same degree of civilisation,—a Federative Government, even if constructed upon the best possible plan, will, so long as it exists, be a weak one: the weaker, the stronger the powers of the several Local Governments.

Of this weakness, the Anglo-American Federative Government exhibited, in its original form, a striking exemplification and proof. The ties were too loose: necessity compelled the strengthening them.

Instructional. Ratiocinative.

ART. 3. The advantages of having, in the given space, a number more or less considerable of political debating assemblies, instead of no more than one—the additional and all-pervading strength thus given to the public mind in every part of the country, each particular Government operating as a check upon the Central Government, as well as upon every other—are advantages, the importance of which is altogether above dispute. Among the causes that contributed to the fall of the French Republic, the want of this advantage was, perhaps, the most influential. While to the capital was confined almost the whole of the political light, the provinces remained, if not in absolute, in different degrees of comparative darkness.

Instructional. Ratiocinative.

ART. 4. But, from the very first, for the securing this advantage, provision the efficiency of which will hardly be deemed exposed to dispute, has been here made, with the utmost anxiety, in and by the existence of, and the powers and duties given to, the Sublegislatures.

In this code, each Sublegislature is a seminary for the Legislature.

In each Sublegislature, public men are continually formed, and sent out upon the stage of public life, furnished with inducements, as well as means, for acting with guardian vigilance, as instruments of control, to the proceedings of the universal Legislature.

In the form here proposed, may be seen a body, and a vast body it may be, with but one soul. In the Federative form, there cannot but be as many souls as distinct governments, and amongst them there may any day be jarring ones.

Instructional. Ratiocinative.

ART. 5. An exception might be where, for defence against hostility, actual or probable, at the hands of another political State, in such sort and degree powerful, that by no other means does resistance against conquest, at the hands of such overpowerful State, afford an adequate promise of being effectual.

But it seems questionable whether, for defence against a common enemy, any preponderant demand for federation has place in any instance. Neither does it appear, that in respect of security against mutual hostility between member and member of a proposed Federal State, any clearly preponderant demand has place, comparison had with such other means as the nature of the case affords.

APPENDIX.

No. I.

Collectanea relating to Book ii. Ch. vi. LEGISLATURE, Section 20, *Attendance and Remuneration*, Art. 18. (Supra, p. 165.)

Extract from an anonymous work, intituled the History of the United States. London, 1826. Published by John Miller, New Bridge Street, Blackfriars.

Speaking of New Orleans in the year 1814, some time in the month of December,—"Disaffection" (says the author, p. 434) "growing bolder, martial law was proclaimed: the authority of the Civil Magistrate was suspended: and arbitrary power was assumed and exercised by the Commander-in-Chief. May no emergency hereafter occur, in which a military officer shall consider himself authorized to cite as a precedent this violation of the Constitution."

To all appearance, it was by this proclamation of martial law that New Orleans was saved: saved from capture, perhaps from destruction: but for this substitute to regular legislation, one or other catastrophe would have taken place.

This is but one of divers accidents to which every Government stands exposed, and by which on pain of suffering, boundless in amount, a demand for immediate action on the part of the all-embracing Legislature may be produced. Foreign war, civil insurrection, pestilence, famine: here are already four, every one of them but too frequently brought to view by experience.

The following information, relating to this subject, the author received from John Neal, Esq., an advocate in the Supreme Judicatory of the Union, January, 1826.

"The members of Congress, of the United States, are elected for two years. They meet in the first Monday in December, and rise at the end of about four months, upon the average. They sit, therefore, only one-third of the time. They may be called together on forty days' notice, however, at any intermediate period. But, although it requires time to make a good law, and the President has power to provide for such events, whatever they may be, as are likely to require extraordinary power—as if the country be invaded, or if a rebellion should break out,—still, cases have occurred where much distress might have been saved to the people, if the chief Legislature had been in session, with power to pass a law quickly.

"By the Constitution of the United States, it is provided that no State of the Confederacy shall pass a law 'to impair the obligation of contracts.' By the same Constitution, power is given to the United States to pass a *general Bankrupt Law*.

"The several States, or the majority of them, have been in the habit of passing *insolvent laws*, which had the effect sometimes of discharging both the person and property of a debtor. This habit continued for thirty years. At last, however, a question was made for the Supreme Court of the United States. That Court decided, that all discharges granted under *State* authority, under such and such circumstances, were void; the law, under the authority of which they were granted, being void, as *impairing the obligation of contracts*. The effect was terrible. The country was agitated in every direction. Houses were entered and stripped—the houses of wealthy men, who had been discharged years and years before. Nothing was heard but complaint. Hundreds and hundreds of old judgments were revived, a multitude of executions issued, and thousands of new suits brought.

"A national bankrupt law was required. But the Legislature were not in session, or, if in session, they had not time enough left before they were to break up, for passing a uniform system of bankrupt law.

"The distress continued, therefore, till it found a remedy, or died away, as the outcry did. So that when the Congress did meet, they were not much pressed about the matter. A law was half prepared, but they broke up, and went home before it was finished—and so was it the next year—and the year after, and so is it now. Up to this hour they have no *bankrupt law in the United States of America*, though thousands and thousands of people are praying for it as their only hope."

No. II.

Collectanea relating to Ch. xi. MINISTERS SEVERALLY, Section 10, *Health Minister*. (Supra, p. 443.)

(*From the Examiner of 9th July*, 1831.)

"SANATORY REGULATIONS.—A circular, of which the following is a copy, has been delivered to the inhabitants of St James's, Westminister, viz.:—'It is strongly recommended

to the inhabitants of this parish, *to have their dust bins emptied at least once in every week*, the fermentation and putrefaction of vegetable and other matters therein being a great cause of infection at this season of the year.' Unless the Board of Health is superintended and stimulated by the Press, it will proceed in the mole-eyed and bit-by-bit manner in which the functions of government are usually performed by government itself, as well as those to whom it delegates authority. After the arrangements of quarantine, and the sanatory regulations against the cholera have been made, the medical commission will probably, if left to itself, become a sinecure; the government acting ignorantly, and without plan, having assigned to the commission only one object, when, with the same expenditure of money, the services of the commissioners might be directed to a number of other objects of permanent importance, for the improvement and preservation of the public health. Such a body would render great service, if, for example, they obtained reports of the districts in which fever patients are the most numerous, or in which epidemics are the most frequent and extensive, and if they investigated the local causes of these diseases, and took measures for their removal. Why should not such a commission be instructed to frame sanatory regulations for the maintenance of cleanliness in the streets, and for the guidance of proper officers in the execution of the existing laws! It does not appear to have occurred to the Home Department, that the police officers, most of whom are occupied in patrolling their rounds from morning to night, for the protection of persons and property, might be employed to enforce such regulations without any detriment to their other duties.*

"A correspondent suggests, in anticipation of an epidemic or contagious disease making its appearance in this metropolis, the necessity of organizing, in each parish, a sanatory committee, composed of active, intelligent, and humane individuals, who should be empowered by the magistrates to visit all dwellings occupied by the poorer classes, and, where there is a want of cleanliness and ventilation, to cause the necessary measures to be carried into effect: such as whitewashing, and proper openings for the free circulation of air; to be done at the expense of the landlord, (if he can afford it,) or by means of parish subscription. The above committee should also inspect uncovered drains, or stagnant pools, that may exist in any part of the parish, and cause the former to be covered, and the latter to be filled up; to the first, the Sewer Company will, no doubt, give its sanction and assistance, as tending to contribute to the public health."

* Most readers will be aware that the desiderata here alluded to, have been to some extent supplied; and that the attention of legislators and the public has of late been so earnestly attracted to the subject, that in a short time nearly all the writer's anticipations seem likely to be fulfilled. In 1840, a select committee made an elaborate inquiry as to the health of towns, with a view to discover how far improvements might be accomplished by means of sanatory regulations. A bill was lately introduced to remedy many of the acknowledged defects, and though withdrawn on account of imperfections in its construction, will probably be soon resumed. Many incidental inquiries have been made by the poor law commissioners,—in the view that whatever propagates disease is connected with the incidence of the poor tax: and they are now occupied in preparing a still more elaborate report on the subject, to be extended to Scotland,—November, 1841.—*Ed.*

No. III.

Collectanea relating to Book ii.—Ch. xii.
Judiciary collectively.

I.

Section 13, *Justice for the Helpless.*

From the Examiner of Sunday, 19*th June*, 1831.

"Queen Square.

"Expense of Justice for Depredations committed on the Poor.—A girl, named *Sophia Chapman*, was yesterday committed for trial on a charge of robbing a foreigner, named Ben Hyam, of a half-sovereign. On the prisoner being committed, the Turk said that he could not attend at the Sessions, as he got his living by travelling round the country; and he would, therefore, much rather put up with the loss of the half-sovereign.—Mr Marriott, on this, said that he must find two sureties to answer for his appearance at the Old Bailey. —The prosecutor said he could do no such thing; and he was therefore committed to jail in default. It is almost impossible to describe how astonished the poor fellow was at this specimen of English Law. Had Basil Hall been so served in a foreign country, we should have liked to have seen his comments on its institutions. Montesquieu says that in Turkey justice is thus administered:—'The cadi hears both the plaintiff and defendant; orders both a drubbing on the spot: and there is an end of the matter.' Ben Hyam will have time, during a protracted imprisonment, to meditate on the superior wisdom of the mode in which it is administered in his own country, and regret that he was not in a country in which he could have a drubbing at once, and the matter be thus ended." The *Morning Chronicle* remarks upon the case:—"The committal of a poor Turk, by a Queen Square magistrate, for inability to find security to prosecute the person who robbed him, would almost lead one to believe that the Essex squire was not so far wrong when he said that the magistrates were they who knew least of the law. There can be no doubt that the

committal is according to law: but there can be as little doubt that such a law is unjust towards the sufferer, and injurious towards the community. But, like many absurd laws, it subsists because the poor alone suffer from it. To detain a poor man who derives his subsistence by travelling about the country, in order to prosecute for a trifle, may be to him of a most serious consequence. In the case of a rich man, the case *would be* trifling; he could easily obtain securities, whom he could indemnify, if more than his personal recognizance should be demanded. The moral is obvious to all who may read the account of the proceedings. It is too bad to be robbed, but still worse to be sent to prison to secure the punishment of the robber. The thief, of course, calculates on this unwillingness to prosecute: and he is not far out in his calculation. Such is the dread of being obliged to prosecute, entertained by people engaged in business in London, except the loss be serious, or the thief has particularly provoked them, that they are exceedingly anxious to keep the matter quiet. We remember another case illustrative of the hardship of our lengthy and expensive penal procedure to labouring people, and persons in the middle rank of life, who are compelled to attend as prosecutors and witnesses. A labouring man, who was the occupier of a cottage in Middlesex, detected a fellow in the act of carrying away one of his geese from the common. The thief was seized, carried before a magistrate, (who will be known to many by the fees demanded,) and committed for trial. The unpaid magistrate (or the magistrate's clerk, rather, in his name) exacted from the labourer six shillings for fees. The value of the goose attempted to be stolen was only four shillings; so that, at the outset, the administrator of the law deprived the poor man of two shillings more than the thief would have taken from him. But the sufferer was also bound over to prosecute; and, what with attendance before the Clerk of the Peace to get the bill of indictment framed; before a Grand Jury to get the bill found; and waiting until the thief was tried, and to obtain his costs,—sixteen days of his time were expended. This was before the establishment of a second court. Each day to him was worth 6s.: but he was only allowed 3s. 6d., which barely paid his expenses in coming to town. His lowest loss was 3s. 6d. a-day: so that the total loss, including the 6s. fees, which were not allowed back, (and which, in truth, were illegally exacted,) amounted to £3, 2s., or the value of fifteen geese. The thief only attempted to take one goose—the law swept away more than the whole flock. Injuries of this kind are daily perpetrated; and the expense of justice is impunity to the depredators. It is only the rich, who have nothing to do, who can prosecute without inconvenience. A thief is usually a martyr for the sake of the others of his fraternity, to protect them in the commission of crime. A prosecutor is a victim to deter other honest people who are plundered from prosecuting. The instances are not unfrequent, where persons who have once prosecuted, abscond from redress when they have been robbed a second time. The mischievous operation of our penal procedure, and the serviceable elisions that might be made in it, have already been demonstrated at full length. There are few who have had better opportunities for observing these evils than Sir Thomas Denman; there are few who are more free from the vulgar prejudices against innovation, entertained by mere technical lawyers: for he admits the inutility and mischief of Grand Juries. We trust that, after the Reform Bill is carried, he will propose reforms in penal procedure more comprehensive and efficient than the bit-by-bit reforms brought forward by Sir Robert Peel."

"COMMON LAW REFORM.—REMANET FEES.

"*To the Editor of the Times.*

"SIR,—Observing the Judges have at length put their shoulder to the wheel, and promulgated some rules tending to reduce the expense of legal proceedings in the first stage of a cause, allow me, through your medium, to call their attention, as well as the common law commissioners, to the urgent necessity of devising some scheme, during the vacation, by which the remanet fees, on the untried causes in London and Middlesex, may be avoided.

"To you, sir, and the unprofessional part of the public, it may be some information to learn, that these fees, and which in the course of twelve months amount to an enormous sum, are not paid either for expediting the trial, or for the trial, but actually, and for no other reason, than the total inability of parties to get their causes tried. Allow me to go a little into detail, and to show the absurdity, as well as the necessity of an immediate alteration. In Middlesex, at the end of the late term, there were 405 untried causes in the King's Bench alone. These are technically called remanets; 126 additional causes were placed in the list for the sittings after term, making a total of 531 causes. In London there were near 600 remanets to the sittings after term, and with the new causes for those sittings, there will no doubt be a total of 800 causes. The term ended the 13th instant, and with the exception of one day, Lord Tenterden has sat in Middlesex ever since, devoting four days for the trial of common jury causes, five days for special juries, and this day for undefended causes. The last common jury cause appointed for trial was No. 73; so that, with the exception of the undefended causes to be tried to-day, and the special juries that have been disposed of this week, there will remain 458 causes untried in Middlesex alone, and which will stand over till Michaelmas term.

In London, seven days are appointed for the trial of common jury causes, and six days for special juries. Now, sir, my complaint is this, that in all human probability there will be in the King's Bench alone, about 1000 causes standing over until Michaelmas term, and (as very few are tried in the term) there will be paid by every plaintiff at the office of the Marshal and Associate (and, I presume, for his benefit, though that is immaterial for the object of this letter) 18s. on every cause, for no other reason than as before stated, because the parties are delayed, and cannot get their causes tried. But, sir, this is not all: the fortunate officer entitled to the 18s. on each cause, is not the only one benefitted,—other fees are paid to other officers, and all for the same cogent reason. In fact, to give your unprofessional readers, and those who have the power of remedying this grievance, some idea of its extent, it will be sufficient for me to say, that 1000 causes, standing over in the way described, will, at the expiration of the next term, be a charge to the unsuccessful litigants alone of upwards of £4000. This is certain, for even if parties settle their differences without a trial, the remanet fees, down to the settlement, must be paid before the record is withdrawn, and the cause struck out of the paper.

"I am afraid, at this particular period, I have already trespassed too much on your indulgence. If, however, you think these remarks are worth noticing, I may in a few days trouble you again.—I am, sir, your obedient servant, A. B.

"*June* 25."

II.

Section 19, *Contested-interpretation-reporting Function.*

From the Morning Chronicle, August 4, 1827.

"WESTERN CIRCUIT ASSIZES.

. . . "One objection to the indictment, namely, that it did not state the accident to have occurred on the king's highway, or in a public road, (and all the precedents showed that such an averment was necessary,) was overruled by the Chief-Justice, (Best,) who observed, that he had little doubt 'the precedents would furnish instances of nonsense of all sorts.' But it was then objected—it was alleged that the coach was drawn by two mares and two geldings, which allegation had not been supported by proof. This was a thumping objection—two mares and two geldings stated in the indictment, and no one to prove the averment!

"The Lord Chief-Justice then said—'He feared that the objections were fatal. At first, he imagined that there was a clause in one of Mr Peel's acts which cured the error, but he found such was not the case. However, he might observe, that when that Right Honourable Gentleman was preparing the bills for the amendment of the criminal law, he consulted all the Judges upon the clauses he proposed, and among them was one which would have been amply sufficient to meet these objections. He (the Lord Chief-Justice) had at the time expressed his opinion in favour of that clause, but Mr Peel, who, with great propriety, determined to be governed by the advice of the majority, struck it out, as the majority of the Judges certainly had thought it would be *introducing too great a laxity in pleading.*'"

III.

Section 20, *Judges' Eventually-emendative Function.*

From the Examiner of Sunday, June 5, 1831.

"COURT OF EXCHEQUER, May 31.

"BIT-BY-BIT LEGAL REFORM.

"Cranage, Gent., Attorney, *against* Price.—In this case the declaration, which was for slander and libel, had been referred to the Master, for such counts to be struck out, as he might think unnecessary. It appeared there were twenty counts for the slander or oral matter of complaint, and eight for the libel or written; many of which differed from one another only by a slight inversion of style, and were identical in effect and meaning. Thus, in one count the charge was, that the defendant 'had published a libel.' Of the counts for slander, the Master struck out twelve; and of those for the libel, he struck out four; and he curtailed the remaining. But as it appeared that the declaration had not been drawn by the plaintiff himself, but by a pleader, whether at or below the bar was not stated, and as the instructions given by the plaintiff were proper, the Master had refused the defendant the costs of the disgusting and rejected superfluity, though he would have done otherwise, and granted the costs, could he have enforced them on the pleader. *Hinc illæ lachrymæ:* the costs formed the substance, the words spoken the pretext only of the quarrel: and the Court and the Bar, who evinced a vivid perception of the ludicrous, at the disappointment of the complainant, in obtaining nothing more than the reduction of the declaration to orthodox dimensions, were convulsed with laughter; whilst Mr ADDISON, with virtuous indignation, 'denounced the scandalous corruption of the science of pleading.' However, the conclusion was tragic.

"Mr Baron Garrow said, that 'such practices were the more scandalous, as the commissioners, supported by the Legislature and by the courts of justice, were devising every means which were within their power, for the abbreviation and simplifying of law proceedings; and he hoped that the present application would show, that the suitors for justice

were not, with impunity, to be made the objects of oppression through the means of any occupation, however little exposed to view, however mysterious that occupation might be.' Undoubtedly the Courts have the power to punish them without the intervention of Parliament. But it is believed that the Courts, or those Judges whose influence is predominant, instead of supporting, as Mr Baron Garrow says, have opposed alterations in special pleading. It is evident that the Courts would be glad that the mere expression of abhorrence at individual instances of abuse, should satisfy the public; but the policy, imitated from the boroughmongers, of victimizing one unlucky attorney or pleader, in order to preserve a bad system, is now too well appreciated to be successful. The day is come for the thorough reform of legal procedure; and special pleading, if retained, can be so,—not in the place of a universal instrument, but as subordinate to the preliminary examination of the parties. The result of the Master's inquiry into the above case, must indeed convince the public of the general inaptitude of special pleading as an instrument of judicature. Urged by Mr Addison to the extreme, the Master could reduce this twenty-eight-fold declaration to only a twelve-fold one; that is, each count being considered in law as a declaration, the Master thought twelve special declarations necessary to bring fairly before the Court one cause of action. Were special pleading employed only as a supplementary process in special cases, and as subordinate to the preliminary examination, the proceeding would vary but little from the ancient system, in which the litigation was conducted *ore tenus*, (that is, in the presence of the Judges,) and was continued by successive imparlances, (that is, successive adjournments,) until this preliminary investigation had completely disclosed to the Judges the true issue, when not until then, the pleadings and issue were drawn and recorded."

IV.

Section 25, *Judges' Attendance*, and Section 27, *Judges', &c., Remuneration.*

The following letter, giving an account of the days of sitting in the French Judicatories, was written by a French Avocat, M. Rez, (then in London,) in answer to questions propounded by Mr Bentham, in July 1826:—

"1. Si l'on excepte les Juges de Paix, à l'égard desquels la *loi* a cru assez important de fixer leur obligation de siéger au moins deux fois par semaine, &c. apparemment parceque c'est une magistrature nouvellement établie,—ce n'est que par des *réglements* émanés, tantôt du gouvernement, et tantôt des cours ou tribunaux, qu'on a fixé ce qui concerne les jours et heures de séance, les vacances, &c. La régle générale est, que les réglements du Gouvernement ont déterminé à cet égard quelques regles *communes à tous les corps judiciaires* du royaume:

2. Et que *chacun de ces corps* a le pouvoir de régler les points secondaires et surtout ceux qui dependent des circonstances particulières à chacun d'eux.

3. Or, le nombre de jours que les cours et tribunaux, (autres que les Juges de Paix,) doivent siéger chaque semaine, est laissé au réglement de chacun de ces corps.

4. Dans ceux, où il y a beaucoup d'affaires, comme à Paris, et quelques autres siéges, il y a séance tous les jours, excepté le dimanche.

5. Je parle ici des affaires *civiles*, ou celles de *petit criminel*, que nous subdivisons en *correctionelles*, et de *simple police*.

6. Quant au *grand criminel*, quand une affaire est commencée, elle n'a pas d'interruption, jusqu'à ce qu'elle soit terminée.

7. On tâche pourtant de fixer les causes de manière, à ce qu'on puisse se reposer le dimanche, c'est-à-dire, en calculant de manière à ce que, le samedi il n'y ait pas de cause assez longue, pour qu'elle ne puisse être finie le même jour.

8. Quant aux *vacances*, il n'y en a que pour le *civil;* et les affaires *criminelles*, *correctionelles*, et de *simple police*, vont leur train toute l'année.

9. Durant les *vacances*, qui durent depuis le 1er Septre, jusqu'au 1er Novbre., il y a, pour *le civil*, une chambre *des vacations*, c'est-à-dire, une des sections du tribunal, ou cour, s'il est composé de plusieurs sections, (ou *tout* le tribunal, s'il n'y a qu'*une* section, mais siégant un peu moins souvent,) qui expedie les affaires urgentes. Ceci est assez incommode pour les petits tribunaux, qui n'ont qu'une section, et qui ne peuvent guère quitter leurs siéges, que peu de jours.

10. Je dois ajouter que les réglements des tribunaux, ou cours, doivent être approuvés, par le *Garde des sceaux*, c'est-a-dire le *ministre de la justice*.

11. Il y a aussi des petites vacances de 8 jours à *Pâques*, mais je crois qu'elles ne sont pas *légalement* autorisées; et dans beaucoup de tribunaux de province, on ne les fait pas.

12. Je ne sais si l'on a changé ces régles depuis mon exil, mais je pense qu'en substance, les régles seront restées les mêmes.

13. J'oubliais de dire, que lorsqu'on est bien pressé, l'on a deux séances par jour. En général, chaque séance, dure *trois heures*, au *civil* et au *correctionnel;* car au grand criminel, on siége souvent 8. ou 10 heures de suite, sauf un très petit intervalle, pour le repos des juges et des jurés."

Mr Bentham sent a copy of the above remarks to his friend, the late Jean Baptiste Say, in order that they might be submitted to the consideration of some practising advocate, and received the following reply:—

"Paris, 18me d'Août, 1826.

"Mon Chèr Maitre,—J'ai consulté sur

votre papier M. Girod de l'Ain, Conseiller à la Cour Royale, Paris. Je vous envoie sa réponse avec la seule observation qu'il ait ajoutée à vos notes, qui sont très exactes. Nul n'en pouvait mieux juger, puisqu'il fait partie de nos tribunaux. Notre grand mal n'est pas là. Il est dans l'influence que le gouvernement s'est reservée sur les tribunaux en nommant et en avançant les juges, qui peuvent à son gré passer d'un tribunal inférieur à un tribunal supérieur, d'une petite ville, dans une plus considérable, du grade de simple Conseiller à celui de Président, de Premier Président, de Procureur Général, de Membre de la Cour de Cassation, de Pair, avec ou sans hérédité, avec ou sans pension, sans compter les autres faveurs de Cour. Aussi en matières où le gouvernement est interessé, les jugements sont détestables. La presque totalité de nos juges sont absolutistes et dévots. S'ils ont dans deux ou trois occasions contrarié les vues du pouvoir, c'était par esprit de secte. Tous les restes de nos anciens parlemens sont Jansénistes et animés d'une haine inextinguible contre les Jesuites. À ce titre ils protègent la liberté des journaux, qui les vexe. Nous ne sommes pas plus avancés que du tems de Voltaire, qui disait quand les Jesuites furent détruits: 'Nous sommes débarrassés des renards, mais nous n'en serons que mieux la proie des loups.' Nous ne respirons que lorsqu'ils se battent. Au reste ce débat n'aura malheureusement pas, de suites serieuses. *Our King* est de la congrégation, c'est à dire Jesuite de robe courte, Jesuite civil, et l'on assure qu'il a dit dernièrement, 'Je saurai bien arrêter toutes poursuites; mon prédécesseur a donné des lois à la France; je lui donnerai une religion.' En attendant, le pouvoir s'est arrogé le monopole de l'instruction de l'enfance, même dans les pensions particulières, et l'on dépravе le bon sens des Français, à la journée.

"J. B. S."

Reply of M. Girod de l'Ain to M. Say.

"17 Août, 1826.

"Monsieur et respectable Ami,—Je suis bien flatté de la confiance que vous m'avez temoignée en me consultant sur la note de M. Jérémie Bentham; je vous la renvoye avec très peu d'observations sur son contenu, qui ne m'a pas paru en exiger davantage. Veuillez, je vous prie, en offrant à ce vénérable publiciste l'expression de ma très haute estime, et du cas particulier que je fais de ses ouvrages, l'assurer que je mettrai toujours un sincère empressement à lui fournir, sur les matières dont il s'occupe, et qui peuvent être de mon ressort, tous documens et explications, qu'il voudrait bien désirer de moi.

"A. Girod de l'Ain."

The only observation of M. de l'Ain's, on the remarks of M. Rez, referred to No. 11, respecting vacation days. It is as follows:—"Pâques et *Pentecôte*, et même de trois ou quatre jours à *Noël*: elles ne sont point autorisées, mais on les prend généralement."

In addition to M. Rez's remarks, Mr Bentham appended the following question in French:—"Je ne trouve pas que les honoraires des Avocats, sont compris dans le Code Napoleon. Quelle est la plus petite somme qu'il est d'usage de reçevoir à ce titre?" To this question M. Girod de l'Ain sent the following indirect answer:—"Le tarif des frais de justice taxe les honoraires d'une plaidoyerie d'Avocat à une somme *très modique*, et c'est l'Avoué qui la perçoit à son profit. L'Avocat est payé extraordinairement par la partie, en raison de son importance à lui même, de celle de la cause, ou de sa difficulté, de la fortune du plaideur &c. L'usage interdit aux Avocats toute action en justice pour la répétition de leurs honoraires: cependant aucune loi ne la prohibe, et un jugement récent a accueilli la demande faite par un Avocat pour ses honoraires."

v.

Section 31, *Judges', &c., Inaugural Declaration:* Art. 10, *Non-electioneering.*

From the Caledonian Mercury, 19*th May*, 1831.

"POLITICAL JUDGES.

"Why was the Lord Justice-Clerk absent from his duty yesterday at the Court of Session? Because, it is said, he preferred going to the Ayrshire election. So, here is a Judge receiving £4000 a-year from Government; his court is prevented from sitting, and to which he is bound to give regular attendance; yet, in defiance of that Government, and indifferent to the interests of the suitors, he has gone to give his vote and support to the candidate who is opposed to the measures of his Majesty's Government, and the general voice of the people. We have more than once had occasion in this Journal to express a very decided opinion against the practice, which has been but too prevalent in this country, and in this city, of Judges mixing themselves up in elections of all sorts. In the course of last year, on the introduction of the new Scotch Judicature Act, we expressed our hope that it would be finally put an end to; but nothing was done at that time to remedy the abuse. The present Government, however, has had the firmness to introduce a clause into the Reform Bill, depriving their Lordships, as well as the Sheriffs of Counties, of the privilege of voting; and we suppose, that with so stanch a partyman as the Lord Justice-Clerk, this alone was a reason for making him even more than usually eager in his hostility. Of the great indecency of this practice we never heard two opinions from influential persons, for this plain reason, that the Judges of the Court of Session are the only Judges who, by Act of Parliament,

have the power of determining all questions that relate to the validity of votes in counties, and the due or undue election of magistrates for burghs. Nothing can illustrate the great impropriety of such a judge as the Lord Justice-Clerk interfering in elections more strongly than the following case:—Not long ago, a vote in Lanarkshire was challenged, when the claim for enrolment was made for the freeholders (who, as most of our readers know, have the power of deciding judicially on such matters;) but the unfortunate gentleman happening to be a *Whig*, the Tories determined to keep him off the roll, and, among others, a Tory judge was present, and voted against the enrolment. A suit in the Court of Session was the result, and it happened, curiously enough, that the case, according to the routine of business, came before the very Tory judge in the Court of Session, who had voted against the enrolment in the Court of Freeholders. The Whig gentleman, whose vote was challenged, deemed it right to decline the jurisdiction of this judge, and the case was verbally reported to the Court, when the Lord Justice-Clerk held, that although, in his opinion, the declinature was not well founded, still, as the judge himself had that morning consented to the removal of the case to another judge, it was unnecessary to say more about the matter. Still, in the Lord Justice-Clerk's opinion, a judge may go electioneering; and although he votes against a freeholder's claim in the Court of Freeholders, that, nevertheless, that circumstance does not incapacitate him from determining on the validity of the appeal of the claimant against the decision of the Court of Freeholders, when it happens to come before him a few weeks afterwards sitting as a judge of the Court of Session."

VI.

Section 34, *Justice Chambers.*

From the Morning Chronicle, June 4, 1824.

"Yesterday the Old Bailey New Court was opened for the first time. The Recorder presided. The form of the court is square, and without ornament. The light falls down from the ceiling; behind is a spacious gallery, admission to which is to be obtained only by tickets from the members of the Corporation, who are entitled to pass in their friends in this order:—Each sheriff passes four; each alderman four; and each common-councilman, two per diem. The box for the law students and reporters is placed opposite to that of the jury. At the table there is a double row of seats; the front for the counsel, and the back for the attorneys; an arrangement frequently wished for, in the old court. But perhaps the new court is the worst contrived court in the metropolis, or anywhere else, for sound; and the spot on which the prisoner is to stand is perhaps the worst part of the court for hearing. We regret to say, that the two new courts at Guildhall, which are nearly finished, have been built on the same plan, and, of course, must be subject to the same condemnation."

Memorandum by the Author.—In the *Morning Chronicle*, 5th June, 1824, is an account of a controversy between the Aldermen and the Common-Council, about the right claimed by the Common-Council to give admission tickets. No care about admission room for the public at large on either side.

From the Morning Chronicle, Nov. 12, 1824.

"Court of Common Pleas.

"CONSTRUCTION OF THE NEW COURT.

"It might have been expected, in this age of improvement, when everything was performed upon scientific principles, and when even the very stones in our roads were laid down with almost mathematical precision, that the architects of our courts of law would have deemed the convenience of the public worthy of some consideration. We do not intend to say that it has been wholly neglected; on the contrary, we give the architect every credit for the improvements with respect to the size of the court, and the freedom of admission and egress. The new court is considerably larger than the old one; and instead of there being but one door through which judges, counsel, students, jurors, attorneys, and witnesses were obliged to pass, there are now six, each of which communicates only with a particular portion of the court, so that much of the confusion and bustle incident upon the determination of one cause and the commencement of another is avoided. The bench is placed at the eastern end of the court, and the seat is elevated about six feet above the floor; the back is formed by cloth of a deep crimson, and on each side are hung curtains of the same material. Over the bench is a sounding board, supported by four Ionic scrolls, which, together with the board, are painted of an oak colour. The Associate and Marshal have seats directly under the bench; and between them and the sergeant's table there is a space of about five feet, through which the witnesses pass when called into the box. Immediately behind the sergeants are the seats appropriated to the junior counsel, and in the rear of them, to the attorneys in waiting; while those who are engaged in the cause under discussion, have seats just below the sergeants.

"The remainder of the court is allotted to the witnesses in attendance, and to the public,—the whole rising from the sergeant's table to the western end, in the form of an amphitheatre. The general appearance of the court is pleasing, and the result in the mind of a casual visiter, who came only to see, would undoubtedly be favourable; but appearance in a public court is not all that is required.

In alluding, some time since, to the principle on which these courts were to be constructed, we declared our opinion that, unless some alteration was made in the arrangement then proposed, the echo would be so powerful as to render everything that was said indistinct, if not nearly inaudible. The suggestion was not attended to, and the result is just as might have been foreseen. The counsel endeavour to speak loudly, in order that they may be heard, but the only effect of their greater exertion is an increase of the noise, while the distinctness of sound is wholly lost. The fact is, that the roof is so high, and that space which, if smaller, might be called the lantern, so contrived, that the sound is completely dissipated. Now we by no means intend to complain of the increased size and loftiness of the court, which, indeed, we consider an advantage grossly neglected by the architects of the courts of Westminster; but what we object to is the want of attention to that proportion necessary to the proper conveyance of sound, and especially to the neglect of the architect in not having erected side galleries, which, while they increased the commodiousness of the court, would have contributed greatly to the facility of hearing. We cannot but regret that architects of the present day will not condescend to study more accurately the proportions of the rooms built by Sir Christopher Wren, who has furnished the most perfect models of the kind, so intimately was he acquainted with the effect of sound. And so minutely did he study the proportions of his buildings, necessary to render its conveyance perfect, that not one of the edifices which he has constructed for that purpose, can be altered with advantage. We have heard that some changes were recently made in one of his churches, and it being thought expedient to remove the situation of the pulpit, the attempt was made, but was afterwards abandoned, as it was found impossible to obtain the sound so well as in the precise spot on which he had fixed. The situation of the witness box, which in the new court is placed in a corner, exactly between the bench and the jury, is also liable to the strongest objections; but on this subject we need make no remark, contenting ourselves with simply relating what fell from the Chief-Justice in the course of the day. One of the witnesses was desired by a learned counsel to speak louder, as it was impossible to hear him, when the Lord Chief-Justice immediately observed:—'From the situation in which the witness stands, he necessarily speaks to me in a whisper; that, however, is not his fault.' Last, but not least, among the grounds of serious complaint, is the position of the students' box. The architect, as if with the design of limiting the number of the future Vaughans and Pells of this bar, and of discouraging the study of the law in general, has allotted only three seats to the students; although it is believed that there are about three thousand who, in that character, have a prescriptive right to accommodation. The part of the court in which that seat is placed is at the right hand corner of the bench, and at such a distance from the witness and the jury, as to render every chance of hearing what passes completely impossible. This, however, is not the only objection: behind the seat is a door leading to an ante-room, appropriated, we believe, to the sergeants, and the passage to which was this day occupied by the officers and servants in attendance upon his lordship. The seat is therefore in a position which seems to indicate the propriety of devoting it to their use. The students' box might, with much greater advantage, have been placed by the side of the jury box, and instead of being thus satirically contracted in its size, should have been constructed so as to afford the students every advantage for hearing and taking notes. This arrangement is rendered so much the more necessary, as the gentlemen connected with the press, who are also students, are, under the present system, subjected to innumerable inconveniences. The alteration of the witness box is also a point of paramount importance. The new courts in London are constructed upon the same plan as the county courts at Norwich; and during the last assizes there, the Lord Chief Baron found it necessary on every trial to have the witnesses placed on the bench, as, from their proximity to the counsel, they always pitched the voice in such a tone, as to render them inaudible to his lordship and the jury. We trust that the Committee for Improvements will, for the credit of the city, attend to these matters, and as speedily as possible make the requisite alterations."

No. IV.

Collectanea, relating to Ch. xvi. Quasi-Jury.

From the Morning Chronicle, 1st *December*, 1831.

"Jurors—their irresponsibility—Grievous Injustice flowing from it.

"We call the attention of our readers to an extract from the *Brighton Guardian*, in another column, on the subject of a trial in which the proprietor of that Journal was concerned. It appeared to us at the time astonishing, after the defendant, *Cohen*, had in all essential respects established his defence, and after the fair and candid charge on that evidence to the Jury, that such ruinous damages should have been given. But the proprietor of the *Brighton Guardian* had the misfortune to have enemies for Jurors; and it appears that they were determined to make the most of the op-

portunity for gratifying their vengeance which the trial presented to them. The sort of justice dealt out to him, may be inferred from the declaration of a juror when remonstrated with,—'Ay, but this is not the *only* case; this editor has been attacking all our institutions; nobody and nothing is secure against him, and *so we determined to put a stop to it or to him.*'"

No. V.

Collectanea, relating to Ch. xxii. APPELLATE JUDICATORIES, Section 8, *Seats, where.*

"Reasons by C. Cameron, Esq., Commissioner for inquiring into the State of the Law in Ceylon, why the Appeal Judge in Ceylon should go Circuits to hear Appeals. 1830.

"In a good system of Judicature, much must be left to the discretion of the Judge.

"2. In order that the Judge may not abuse his discretion, he must feel that he is observed by somebody, whose good opinion is of importance to him.

"3. In England, the observation of the public answers this purpose better than any other.

"4. In Ceylon, the opinion of that public which constitutes the audience of a Provincial Judge, has little more effect upon the Judge than the opinion of a flock of sheep has upon the shepherd.

"5. It must be observed, also, that there is for the purpose now in view, no printing-press in Ceylon, and no probability that one will exist for a long period.

"6. These things being so, I can devise no better scheme for laying the Provincial Judges under a real responsibility, and for giving something like the requisite weight to the opinion of the public, which constitute his audience, than sending the Appeal Judge periodically into his district, not only to rectify any mistakes that may have been committed in point of law, but also to rehear any cases in which, through mistakes or misconduct, a rehearing may be desirable.

"7. In the Provincial Courts of Ceylon there are no advocates. The native Proctors are ignorant and knavish; and the pleadings and evidence upon which the judge decides, are translations made by native interpreters of the statements made by the *parties* and their witnesses. The Proctors and interpreters have a strong interest in conciliating the favour of the Provincial Judge.

"8. Under these disadvantages, (and none of them seem to admit of immediate remedy,) there is little chance that an appeal from a Provincial Judge, or an application for a rehearing, should be carried by the post to the Appeal Judge in Colombo, in a shape calculated to procure a decision disagreeable to the Provincial Judge.

"9. But if the Appeal Judge comes to the place where the Provincial Judge holds his Court, the parties and their witnesses may have the same access to him that they have to the Provincial Judge, and the latter will always act under the knowledge that his proceedings will be really subject to the revision of a Judge of superior learning, habitually controlled himself when in the exercise of his original jurisdiction at Colombo, by as much of public opinion as is to be found in the island, and in the exercise of his appellate jurisdiction on circuit, by the presence of the officers of his court, of the Advocate Fiscal, and of the Proctor for prisoners and paupers, who, being all Europeans, may be considered as the representatives of the public of Colombo.

"I use these designations, because officers now exist who bear them, and who now accompany the Supreme Court on its criminal circuits."

No. VI.

Collectanea relating to Ch. xxiii., PROFESSIONAL LAWYERS.

I.

Section 1, *Professional Lawyers, who.*

From the Examiner, 1830.

"LAW.—COURT OF KING'S BENCH, WESTMINSTER.—*Collier* v. *Hicks* and *Others.*—This was an action by an attorney at Cheltenham against Sir W. Hicks and another magistrate of that town, and two of their officers, for expelling the plaintiff from their Justice-room. The case came on upon a demurrer to two special pleas of justification. The facts were these:—In December 1829, an information was laid before the magistrates at Cheltenham, by one Latham, against the proprietors of a stage-coach, for not having a plate with a number upon the coach. On the hearing of the information, the plaintiff, Mr Collier, appeared, and proposed to act as an advocate in taking notes and conducting the proceedings on the part of the informer; but the magistrates refused to let him act in that character; and on his persisting in his attempt to do so, he was removed from the Justice-room. The question now for the decision of the Court was, whether the plaintiff had a right to be present at the hearing of the information before the magistrates, as the attorney of the informer, and to take notes of the evidence?

Their Lordships delivered their opinions *seriatim*, at considerable length: the substance of their judgment was, that the magistrates had a discretion in common with other courts of justice in regulating their proceedings, of determining who should be heard before them in the character of an advocate. The pleadings in this case did not raise the question as to the right of any person merely taking notes,

but the plaintiff put it on the ground that he had a right to act as an advocate in arguing or expounding the law, and examining or cross-examining witnesses; and it had been very properly said, that if the magistrates could exclude an attorney, they had also the power to prevent a barrister or any one of the public from acting as an advocate. The Court was of opinion that the magistrates had that power, although frequently, in the exercise of their discretion, they allowed members of either branch of the profession to conduct cases where the accuser or the defendant required legal assistance. The superior Courts of Westminster Hall had the power, and were bound, according to ancient usage, not to allow any persons to plead before them but barristers who were members of one of the inns of court; and in the Court of Common Pleas, none but barristers who had attained the dignity of sergeant were allowed to practise. It might be proper that either party should have the advice and assistance of a counsel or attorney in some cases; but it did not follow that it was desirable in all cases; for it must necessarily lead to expense, as the other party must be provided with the same assistance to be on equal terms with his adversary. It might also be doubted whether such a practice was favourable to the due administration of justice; for members of either branch of the profession in discussions before magistrates, might urge technical objections quite beside the justice of the case which must have the effect of embarrassing persons not accustomed to such subtilties. In the case of "Dauheny *v.* Cooper," and other cases, it was decided that all the King's subjects had a right to be present in an open court, so that there was room, and they conducted themselves with decorum; but those cases did not bear upon the present question, which was, whether magistrates had the power to decide who should appear before them as advocates; and the Court being of opinion that the magistrates had that power, the assault, in excluding the plaintiff from the police-office, was justified.—Judgment for the defendants.

[This is a most extraordinary and important decision, of which we shall say more at convenient opportunity. Lord Tenterden is fearful that magistrates will be embarrassed by legal subtilties. He has no such fear for common jurors, who are, we must thence suppose, wiser than magistrates.—*Examiner.*]

II.

Section 2. *Litiscontestational Class—one only.*

The following copies of documents relating to the admission of professional lawyers in the United States' Judicatories were furnished to Mr Bentham by Mr Neal:

(*Copy.*)

"THE UNITED STATES OF AMERICA.

"*District of Maryland, to wit,—*

"At a District Court of the United States, in and for the district of Maryland, begun and held at the city of Baltimore, on the first Tuesday of March, in the year of our Lord, one thousand eight hundred and twenty.—Present,

"The Honourable THEODORICK BLAND,
"Judge of the District of Maryland.
"ELIAS GLENN, Esquire, Attorney.
"PAUL BENTALON, Esquire, Marshal.
"PHILIP MOORE, Clerk.

"Among other, were the following proceedings, to wit,—Be it remembered that, on the eleventh day of March, in the year aforesaid, John Neal, Esquire, on motion of Elias Glenn, Esquire, was admitted an Attorney* of this Court, and took and subscribed the oaths prescribed by law.

"In testimony that the foregoing is a true copy, taken from the Record and proceedings of the District Court aforesaid, I hereunto subscribe my name and affix the seal of the said District Court, this tenth day of November, in the year of our Lord, one thousand eight hundred and twenty-three.

"PHILIP MOORE, Clk.
"Dist. Ct."

(*Copy.*)

"THE UNITED STATES OF AMERICA.

"*District of Maryland, to wit,—*

"At a Circuit Court of the United States for the fourth circuit, in and for the district of Maryland, begun and held at the city of Baltimore, on the first day of May, in the year of our Lord, one thousand eight hundred and twenty-two.

"Present,—The Honourable GABRIEL DUVALL, one of the Associate Justices of the Supreme Court of the United States.
"THEODORICK BLAND, Judge of the District of Maryland.
"ELIAS GLENN, Esquire, Attorney.
"PAUL BENTALON, Esquire, Marshal.
"PHILIP MOORE, Clerk.

"Among other, were the following proceedings, to wit,—Be it remembered that, at the above term, John Neal, Esquire, was admitted an Attorney* of this Court, and took and subscribed the several oaths prescribed by law. In testimony that the foregoing is a true copy, taken from the Record and proceedings of the Circuit Court aforesaid, I hereunto set my hand and affix the seal of the said Circuit Court, this tenth day of November, in the year of our Lord, one thousand eight hundred and twenty-three.

"PHILIP MOORE, Clk.
"Circt. Ct."

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* *Note by Mr Neal.*—No higher title is known at law, in the United States; all the business is done by advocates, with the title of *Attorney*; except in the Supreme (Federal) Court of the U. S., where a member is admitted as Attorney and Counsellor.

III.

Section 4. *Locable who.*

(*Copy.*)

"I, Elias B. Caldwell, clerk of the Supreme Court of the United States, do hereby certify, That, on the twenty-seventh day of February, one thousand eight hundred and twenty-three, John Neal, Esquire, was duly admitted an Attorney and Counsellor of the Supreme Court of the United States.

"In testimony whereof, I have hereunto set my hand, and affixed the seal of the said Supreme Court, this fourteenth day of November, in the year of our Lord, one thousand eight hundred and twenty-three.

(Signed) "E. B. Caldwell,
"Clk. Sup. Ct. U. S."

(*Copy.*)

"State of Maryland.

"*Baltimore County, to wit,*—

"At a County Court of the sixth Judicial District of the State of Maryland, begun and held at the Court-house in the city of Baltimore, in and for the county aforesaid, on the third Monday of September, (being the twentieth day of the same month,) in the year of our Lord, one thousand eight hundred and nineteen.

Present,—

"The Hon. { Walter Dorsey, Esq., Chief Judge. Charles W. Hanson, and William H. Ward, Esqs., Associate Judges.

"John Stevenson, Esquire, Sheriff.
"William Gibson, Clerk.

"Among other, were the following proceedings, to wit,—Be it remembered that, at the above term, to wit, on this fifth day of January, in the year of our Lord, one thousand eight hundred and twenty, on application of John Neal, Esquire, to be admitted as an Attorney of this court, John Purviance and George Winchester, Esquires, are appointed to examine the said John Neal, and report to said court whether he is qualified or not, who thereupon report to the court here that, in pursuance of the said appointment, they have examined the said John Neal, and find him qualified to be admitted as an Attorney of this court; and thereupon the said John Neal is admitted an Attorney of this court, and took and subscribed to the several oaths prescribed by law.

"In testimony that the foregoing is a true copy from the Record and proceedings of Baltimore County Court, I have hereto subscribed my name, and affixed the seal of said Court, this tenth day of November, eighteen hundred and twenty-three.

"Wm. Gibson, Clk.
"Balt. Coy. Ct."

IV.

Section 6. *Remuneration.*

Main Cause of the Mischievousness of Libel Law, the Factitious Expense.

From the Examiner of the 29th July, 1827.

"The Press, the Law, and the Pettifoggers.

"It is much to the credit of the Government, that for some years past there has scarcely been a single prosecution by the Attorney-General for libel; and it is equally to the credit of the press, that the liberal and manly policy of the Ministry has been fully appreciated; and that, in a crisis where the Government is exposed to the attacks of a formidable faction, nearly every respectable print in the kingdom has come forward zealously to its support. But, though public prosecutions have been rare, there was scarcely ever a time when private prosecutions were so abundant, or of such an impudent character. The list of these prosecutions for the last twelve months would be startling, and the characters of those by whom they were commenced would be yet more so. Convicted felons have brought actions, because their forgeries and bigamies were exposed to that public whom they had opportunities of corrupting; oppressive magistrates, because their acts of injustice have been recorded; kept mistresses, because their licentious courses were denounced; unnatural relatives, because their unheard-of cruelties have been mentioned; stupid architects, because their ridiculous erections were criticised; habitual libellers, because they were repaid in their own coin; falsifiers of petitions, because their fraudulent practices were made known; men guilty of bribery and corruption at elections, because they were truly charged with it; shameless adulteresses, because legal documents attesting their guilt were published; foolish barristers, because their ridiculous conduct was correctly reported. And the proprietors of newspapers have been prosecuted, not merely for the publication of the just charges against these individuals on their own authority, but for accurately reporting the proceedings at police-offices and in courts of justice,—for inserting advertisements with the real signatures of persons ready to support or to answer for their allegations,—for publishing affidavits filed in a court of equity,—for copying—barely copying—from other papers published hundreds of miles off, the details of offences, concerning which the individuals prosecuted were equally uninformed and uninterested. To complete the character of these proceedings, the actions have, in several cases, been brought by attorneys, who have urged the parties to prosecute, with no other view than making a good job of the transaction.

"People often talk bitterly of the licentiousness of the press, and we are far from

saying that there are not mean, malignant, unprincipled calumniators, reckless alike of private character and of the public benefit; but we beg that those who condemn the press generally, would look at the heavy penalties which hang over the head of every publisher, and observe how the most honourable, disinterested, and prudent men, are rendered liable to expensive, if not ruinous prosecutions, from persons the most profligate. The law of libel, as laid down by the Judges, is such, that we venture to say there is not any number of any journal in Great Britain, though published with the most exemplary care, and with the utter absence of every motive to defame, which might not render the publisher liable to prosecution. Nor does a publisher escape by a verdict in his favour: a verdict of *one farthing* against him, though really intended as an acquittal, leaves him (except in very extraordinary cases where the Judge refuses to certify) charged with the costs of both parties. Even a verdict *for the defendant*, in a criminal prosecution for libel, leaves him to pay his own costs, which will seldom fall below £150 or £200. Now the instances have of late been extremely numerous, of publishers, utterly free from any motive for detraction, being thus saddled with enormous expenses, by persons deserving only of infamy and contempt. In one instance within our knowledge, a journal was broken up by such a transaction, though the publisher had merely *copied* from a distant paper the account of an act of horrid cruelty.

"In these cases, and standing as the law at present does, the Jury are responsible for the protection of publishers against unjust attacks. It is the duty imposed upon every juryman by his oath, to acquit a defendant, if there is no reason to believe that he has been actuated by malicious motives; for all indictments for libel, charge malice as the essence of the crime, and it is obvious to common sense that without this there is no guilt. Juries, however, have too often been found to give verdicts against the press, where this essential feature of guilt was wanting; and we believe they have done it in ignorance of the consequences which their verdicts involve. They are too apt to be influenced by the opinions of Judges, who almost invariably decide against the press. The Judges are themselves influenced by previous decisions; by the absurd legal fiction, that malice is necessarily to be inferred in every accusation or reflection; in some cases, by political subserviency, and in others, by that jealous and sensitive spirit which leads men in authority to extend as far as possible the range of their power, and to dislike whatever operates as a check upon their actions. Juries, however, have not unfrequently shown a proper sense of the dignity and duties of their office, and have returned verdicts for the Defendants where they could discover no evidence of malice or falsehood. No less than five actions have been tried during the last week, in two of which verdicts were given for the defendants, and in the other three damages of one farthing each. We hope that these verdicts will check the spirit of persecution, and that they will be an example to future Juries, if the press should again be subjected to the attacks of public delinquents and mercenary attorneys. If the utility of a free press is recognised,—and no one in this country ventures openly to deny it,—printers and publishers must be defended against wanton prosecutions. We do not plead for malice or faction, but we do claim protection for every editor in the honourable and upright discharge of his duties, even though he fall into unintentional error, or denounce those whose actions make them a public nuisance.—*Leeds Mercury.*

"Under the present law of libel, as laid down by our Judges, no newspaper proprietor, no bookseller, or writer of any description, is safe. Libel has been defined by the late Lord Ellenborough to be 'anything which hurts the feelings or the reputation of any individual.' We defy the meekest and the wisest man upon earth to write upon any disputed point without hurting the feelings of some person. True, indeed, the public press of this country assumes a considerable licence in speaking of public men and public measures; but be it remembered that this is done in *defiance*, and not with the sanction of the law. Upon public opinion, the press relies for protection from the consequences of its temerity; but too often is public opinion found to be a broken reed. The public cannot be made too generally aware, that when the measures of government are canvassed by political journals, those publications are indebted for their impunity to the *forbearance* of that Government whose acts they presume to question.—*Belfast Northern Whig.*

"If when actions for libel are brought against the press by pettifogging attorneys or briefless barristers, whose characters Juries estimate at the value of a farthing or a shilling, it would be well, before Juries gave such people verdicts for even one farthing, to inquire what the cost to a newspaper would be. They ought to ask such question in court, before they deliver their verdict; because it would then become a question for a Jury to consider whether the better plan would not be to find a verdict in favour of the newspaper, so as to throw the costs upon those whose trade it is to bring actions against newspapers for the sake of the costs. When law was comparatively cheap, it was well enough, when a man's character had suffered damage, to the value of a farthing or a shilling, to find a verdict in favour of the plaintiff, thus saddling the newspapers with the costs on both sides, for probably at that time a newspaper could escape with the loss of £40 or £50; but now, when law is shamefully dear in all its branches, it is quite another thing for Juries to give ver-

dicts against newspapers, for a verdict of one *farthing* carries costs to the amount of nearly £300. The law with respect to libel is severe enough; Juries need not add to its severity by giving costs to the tribe that we have named. If Juries do not in all fair instances, protect newspapers, the freedom of the press will be a mere name, and the public will find, to its cost, that itself, as Jurymen, had let in plunderers to plunder with impunity."—*Morning Herald.*

The following information respecting the remuneration of professional lawyers in the United States, was furnished by Mr Neal, in March, 1827, *who was then in England:*—

"I am strongly inclined to believe that, upon the average throughout the United States, it does not cost more than five dollars (22s. 6d.) to make any conveyance—taking one conveyance with another.

"In the middle States, the business of conveyancing is carried on by mere scriveners and justices of the peace without any knowledge of the law; and their regular charge for conveyance or mortgage is from three to five dollars, (13s. 6d. to 22s. 6d.)

"The average length of a bill of bargain and sale, of lease and release, a lease, or a mortgage, I dare say, does not exceed what may conveniently be written upon two pages of the '*conveyancy paper*,' which is about twice the size of this.*

"Parchment is seldom or never used.

"It is common for leases to be made by a slight memorandum,—a few lines only.

"In the whole United States, there are not probably five conveyancers by profession. I do not know one. And, generally speaking, lawyers are not even employed to look into titles; not once, perhaps, in five hundred cases of sale or transfer.

"In very complicated marriage settlements lawyers are employed, who give the heads to a clerk, and the papers are drawn up with a brevity which is without example here,—I should say that *for the same purposes* in America, not more than a tenth part as many words would be used, as are used here, (N.B. I speak of *legal writings*.)"

No. VII.

Collectanea relating to Ch. xxv. Local Headmen, and Ch. xxvi. Local Registrars.

From the Morning Chronicle, 15th April, 1830.

"In the Appendix to a work just published, by Lieut. Colonel Briggs, of the Madras Army, on '*the present Land Tax in India, considered as a measure of Finance*,' there is an extract from a law promulgated on the 14th March, 1814, for the village Municipalities of Wirtemberg, which might be of great advantage to those of our Legislators who really wish to introduce something like purity into our parochial administrations:—

'Every village and town forms a Commune.

. . . . . .

Every individual and every description of property within the limits of the township is amenable to its laws, unless especially exempted.

. . . . . .

'The affairs of the township shall be intrusted to a Common Council, which shall consist of not less than seven, and not more than twenty-one members.

'The members of the Council shall be elected by the Commune, according to a majority of votes. [*Every adult male enjoying civil rights is entitled to vote.* The vote is given in writing, and put into a box, which is opened in public, and the successful candidates are announced.]

'The Council represents the interests of the village in its relations with the Government; its duty is to protect the people from external encroachments, and from internal disorder.

'Every village or town elects its Mayor, or Chief, who is *ex officio* Chairman of the Council.

. . . . . .

'The Mayor receives a salary from the village which is paid out of the common fund.

'The duties of the Mayor are to maintain public order and security; to superintend the police, both for the security of the community and for the benefit of the Government; to execute the laws; to assist and expedite the poor and helpless; to give information and assistance to strangers; to prevent all acts of injustice and oppression; to superintend and act for the welfare of the village; to direct the management of its affairs in concert with the Council, and to prevent abuses. [The same duties, the same office, and the same mode of election, are common throughout most parts of Germany.]

. . . . . .

'The Council shall elect a Public Record Keeper, whose office lasts for life; he, like the Mayor, shall be paid out of the common fund.

'The Council shall have the management of the funds of the Corporation, and elect a Treasurer from amongst its Members, who shall superintend and examine the accounts.

'The Council shall decide on the best mode of managing the public funds, and shall judge of the necessity of all charges in the most frugal manner; or the employment of the surplus funds; and in case of deficit, on the mode of raising means to defray the expenses.

. . . . . .

'The Mayor shall form the annual Budget of the Commune, and submit it first to the Council, subsequently to the Committee, and eventually to the Government.

. . . . . .

'Every year the public accounts shall be closed, and read by the Registrar, in the ab-

* Viz.: an ordinary sheet of writing paper.

sence of the Treasurer, to the assembled Commune, and shall be left in possession of the Council for eight days. They shall then be submitted to the Village Committee, with the necessary vouchers, which is bound to return them to the Council within one month, with any remarks it may think necessary.

. . . . . .

'The Commune takes no immediate concern in the public affairs, nor can it assemble without being summoned by the Mayor; but it has a right to elect a permanent Committee to control the acts of the Council.

'The Committee consists of the same number of members as the Council; it is elected for two years.

. . . . . .

'The Council is obliged to obtain the consent of the Committee of Control in the following cases:—

'1. In the formation of the Budget and the Assessment.

'2. In the defraying of any Expenses.

'3. On the occasion of forming all Contracts on account of the village, which are not put up to public auction; especially should the contract be to be made with a Member of the Council.

'4. On remunerating the Members of the Council for extra services.

'5. On remitting balances due to the village.

'6. In all charges whatsoever of the public disbursements on the public funds.

'When the Council and Committee of Control cannot agree on any matter, no charge shall take place.

'The Committee, on examining the Budget, shall be competent to annex any remarks it may have to make on the general state of the community and its concerns.'

. . . . . .

"How superior the organization of these communities to anything we have in this country. Here everything is anarchy or irresponsibility. By this scheme, the people are deprived of what they never can discharge with advantage—the power of deliberation on the parochial affairs; while they have full scope in electing those who have to execute and deliberate. Care, again, is taken, by the appointment of a Committee, that the Council or Parliament of the Communes shall not exceed its powers. In our parishes there is neither Executive nor Council. One of the Churchwardens is always a creation of the Parson, and hostile to the parishioners; and the Overseers hurry through their task the best way they can. All the functions assigned to the Mayor of the Commune in Wirtemberg are in England assigned to no one. If a Churchwarden or Overseer have a relation an attorney, the parish funds are liberally expended in prosecutions and litigation in general. But in general, individuals are left to protect themselves as they best can."

No. VIII.

Collectanea relating to Ch. xxxi. Government, Simple or Federative.

Suggestions by Mr Neal.

"Army.

"1. It is an idea of Mr Bentham's, that the regiments, and even the companies which compose the Federal Army, should be made up of men from each of the States.

"2. If troops are to be encamped together, or if they have not much to do at any time, they should be mixed up as much as possible.

"3. But if they are in the field, with an enemy before them, they cannot be too little mixed.

"4. That very rivalry which is bad in a time of leisure, would be good if a battle was at hand.

"5. The U. S. A. have had some proof. All the disaffection that occurred in the Revolutionary War, grew out of the *separation* of the troops, the regiments of this State from the regiments of that State, the men of the south from the men of the north. Still, however, when they came to fight a common enemy, they fought the better for being separated: and when they were joined as a body to attack the British on one side, while the French, as a body, attacked the British on another side, (as at York Town, where Cornwallis surrendered,) they behaved all the better for being each for itself.

"6. It is common to distribute mutinous troops; and we know that the *esprit de corps* is quite as strong as any other spirit, after a time.

"7. It should be an object with the Federal Government to get possession of certain posts, and to garrison them, in each of the State Governments.

"8. The jealousy of the latter may interfere with such a plan for a time, under a dread of *consolidation*, but when they see that the federal head is rendered so much the stronger, at so much less expense, by having the command of such and such rivers and highways, they will be likely to yield.

"9. We have found it so in U. S. A."

"Revenue.

"1. Under the old articles of confederation, the Anglo-United States had no power to raise money as a *federal* body. What they received was by a sort of irregular contribution. Each State gave what it pleased, and no more, and almost every one tried to pay as little as possible, even after the quota of each was fixed by the General Congress.

"2. Much of this evil might have been avoided, if all the States had known what each paid.

"3. But for want of *publicity*, certain of

the States were thought to be defaulters when they were not, and others were supposed to be defaulters to a larger amount than they were.

"4. The consequence was, that each State endeavoured to pay as little as it could.

"5. There was no reputation to be had by doing more than its duty—no disgrace to be apprehended from doing less.

"6. If a tax be levied by the General Government—perhaps it may be well to offer to every State its quota at a *discount*.

"7. People in America are much in the habit of considering such discount as a *profit*, or, at any rate, as an *abatement* for prompt pay.

"8. By the *Registration System* of Mr Bentham, added to the *publicity* which he provides for, the difficulty of obtaining a true knowledge of the wealth and population of a country would be materially lessened.

"9. So much so, that ten yearly tables might be furnished to the heads of department, perhaps at less expense than one table such as they are now furnished with (in U. S. A.) every ten years.

"10. The population would be shown every year.

"11. And if, as all contracts are to be registered, the parties could be induced to state the *value* of the subject matter, the wealth of the country might be nearly estimated in the same way.

"12. But could they be so induced? It is believed they could. Men pay larger taxes than they ought, merely that they may be thought richer than they are. Most men desire to be thought richer than they are.

"13. And they find the political importance of their State to be in proportion to its wealth: whatever else they may do, they will not be likely to underrate the value of their own property.

"14. To counteract the tendency to exaggerate, there will be the counterpoise of taxation."

END OF VOLUME NINTH.

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Printed by WILLIAM TAIT, Prince's Street.

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